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CORPORATE MERGERS AND TAKEOVERS

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, IMPACT OF DEREGULATION, AND PRIVATIZATION

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

AKRON, OH, MAY 29, 1987

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CORPORATE MERGERS AND TAKEOVERS

FRIDAY, MAY 29, 1987

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ANTITRUST, IMPACT OF
DEREGULATION, AND PRIVATIZATION,
COMMITTEE ON SMALL BUSINESS
Akron, OH.

The subcommittee met, pursuant to notice, at 10 a.m. in the auditorium of the Akron Government Office Building, 161 South High Street, Akron, OH 44308, Hon. Dennis E. Eckart (chairman of the subcommittee) presiding.

Present: Chairman Eckart and Representative Sawyer.

Chairman ECKART. This hearing of the Small Business Subcommittee on Antitrust, Impact of Deregulation, and Privatization will come to order.

Our colleagues are somewhere between here and there, given airline deregulations, telephone deregulations, trucking deregulations, and railroad deregulations. I think if we try to put that airline bill on the floor today, we would be hard put to get votes.

Fortunately, we tried to travel yesterday and made it here sometime last night in anticipation of this hearing.

I want to thank those in attendance today. I want to say thanks for the work of our Republican minority and majority staff and, especially Tom, I want to thank you for the work of your Akron office.

When the Congress goes on the road, we need hospitality, we need help, and your office has been most gracious in both of those circumstances, and so, I want to say a special thanks to your Akron office for being helpful.

Congress is moving in the arena of acquisitions of corporate and State builders. The responsibilities of my Small Business Subcommittee is to focus on what will be a Small Business Title and the larger merger acquisition legislation proposed within the last 4 weeks by Congressman Mike Oxley.

Ohio has been one of the key battlegrounds in the fights over corporate mergers and acquisitions.

Owens-Corning, Goodwin, Goodyear, Uniroyal, and just in the last few days, Sea World, in Aurora, has been part of a takeover by another friend or potential foe from England. His efforts to take over Harcourt Brace, which fortunately was announced just this morning, are going to be done away with.

Ohio has also been part of the major decision in the passage of the key State legislation to make the playing field a little more level as we deal with corporate takeovers.

Our committee is going to be responsible for a Small Business Title and the questions we are going to examine in the course of today's hearing will help to show Government how small businesses do on Main Street. Wall Street complications are quite clear dealing with these hostile takeovers.

Do we or do we not preempt appropriate laws such as the State legislation in its defenses?

Do we assert an appropriate community impact statement such as my Republican colleague from western Ohio, Congressman Mike Oxley, has introduced and seeks to have included as part of a corporate merger acquisition legislation?

It's absolutely important to me as we review the Williams Act, passed in 1968 to defend shareholders, that we also make it absolutely certain that communities and small businesses are protected as well.

Activities in Washington, which closed the partnership loophole in the last 2 days, are going to be helpful, but frankly, most everyone who views the circumstances that have transpired in America in the last 18 months acknowledge clearly that that is not enough.

In the last 3 years over $300 billion of capital in this country has been sapped by corporate takeovers; corporate takeovers which have not created jobs, corporate takeovers which have destroyed the communities in which those corporations found themselves, and a number of which have been engineered by foreign individuals not subjected to current provisions in our securities law.

The witnesses that we will have today and for the balance of merger and takeover hearings in both the Energy and Commerce Committee, of which I am a member, and the Small Business Antitrust Subcommittee, of which I am chairman, will go toward a markup scheduled for fall of this year.

This hearing is important to us. The case study that we are doing will focus on what happened in Akron as a result of the Goodyear takeover attempt. This will be an important part of the delivery process and before we ask our first witness, let me introduce my colleague from Akron, a man who I shared some time and a seat with many moons ago. I am proud to say that he is now a member of our congressional delegation, Tom Sawyer.

Mr. SAWYER. Thank you. You make that time spent together, several terms, sound almost as if we were let out for good behavior.

I very much appreciate the fact that you have made this special effort to bring this hearing to Akron, OH.

I think that there are few communities across this country who can speak with any greater practical experience or fundamental insight into the connections of the kinds of activities that we hope to discuss today.

There is a great deal that we, as a community, can contribute about how we can achieve the kind of long-term growth and economy that we want for our economy.

As you know, last November, when corporate leader James Goldsmith began his unsuccessful bid for Goodyear, the people of this community became conversant with concepts and terminology that have usually been reserved for discussions of regulatory bodies and corporate board members. Yet, it has come to be a fact of life that

those sometimes arcane concepts have very real world consequences for all of us.

In more recent months, we've seen similar kinds of activities with regard to GenCorp and other consequences all across the country, whether we are talking about those corporations or any of the other major global actors in the field of rubber tires or synthetic material that have found their headquarters in Akron, OH.

I have prepared a more definitive opening statement this morning that signifies some of those consequences that we felt as a community. I would appreciate it if that statement and several others be made part of the record.

But in lieu of offering that right now, just let me reiterate my thanks to you for your ongoing efforts and say let's get on with the hearing.

[Mr. Sawyer's prepared statement, with attachments, may be found in the appendix.]

Chairman ECKART. No objection to your statements. Several other written statements that have been provided to the subcommittee by other folks will be made part of the hearing record, and the record will be left open for 10 days to receive additional inquiries or objections.

Our first witness will be the Honorable Mayor of the city of Akron, Donald L. Plusquellic.

Mr. Mayor.

TESTIMONY OF HON. DONALD L. PLUSQUELLIC, MAYOR, CITY OF AKRON, OH

Mr. PLUSQUELLIC. Mr. Chairman, Congressman Sawyer, thank you, first of all, for the opportunity to testify here today on this most important issue.

I am Donald L. Plusquellic, Mayor, city of Akron, OH, and I am Mayor of a city which knows all too well the effects of this current wave of hostile corporate takeover activity.

In fact, I think there is no more appropriate city in this country for this type of hearing to be held.

I would like to give you, first, some background on our community.

Akron, OH, is a city with a deep sense of pride and a long history of continued prosperity, despite periods of bust as well as boom. In recent years, it was a city hit hard by the forces of the global economy.

Akron's major corporations, in an effort to become more competitive on a global basis, cut thousands of production jobs from turn of the century factories here, shifting their production employment to other areas, both in the United States and overseas.

Instead of rolling over and playing dead, however, our city has rebounded strongly and, in fact, has become a model for industrial cities making the transformation to the new service-oriented economy.

Industrial companies that grew up in Akron have reinvested in their headquarters and research and development operations, adopting a long-term strategic outlook and solidifying their base in the community. This has helped to stimulate growth in the local

service industry, providing job opportunities for residents and confidence for new businesses starting or moving into the community.

Now, however, a new destructive force is threatening to tear down all that we worked hard to preserve. Unrestrained hostile takeover activity is causing chaos in the local economy. In the last 6 months, potential takeovers have threatened four large companies in Akron.

It all started with the most celebrated case last fall—Goodyear. For 3 months, this community, together with the corporation, was locked in a long, drawn-out battle with an international financier. We won that battle. Goodyear Tire & Rubber is still under local control, but the toll on the community was heavy.

This battle was immediately followed by rumors of a takeover of B.F. Goodrich Co. and actual corporate raids against GenCorp and McDermott International, the parent company of a large local employer, Babcock & Wilcox.

In each of these cases, the corporate raiders abandoned their takeover attempts, yet walked away with a healthy profit. The effects on the community were a loss of jobs, and the sale or proposed sale of lifelong Akron companies, specifically, Goodyear Aerospace Corp. and General Tire.

The job losses resulting from these raids are particularly discouraging. They are the types of jobs representing investments in productivity improvements, and research and development—investments which will pay off in the long run.

These long-term investments contrast sharply, however, with the reckless, quick-profit mentality of corporate raiders. Our industrial corporations are working harder and smarter and, as a result, are beating their global competitors. It is disheartening to see them forced to abandon their strategic objectives in order to survive this wave of unproductive corporate takeovers.

Even more disappointing is the ripple effect these layoffs are having on the local economy. Over the past 3 years, we witnessed an impressive recovery in the local economy from the recession of the early 1980's. It is most unfortunate to see this growth slowed in part by the activities of corporate raiders on Wall Street.

Moreover, it is safe to say that the confidence of individuals and businesses in the Akron area is shaken. Some businesses, looking at the Akron market as a place to expand, are delaying a decision and taking a second, harder look.

Recently, the Akron Regional Development Board, an association of local businesses, Government, and labor, adopted a position against hostile takeovers and has encouraged anti-takeover legislation. I support that position and urge you to adopt such legislation.

We need legislation to assure disclosure and deliberation in the acquisition process. Loopholes should be closed, and openness mandated, so that shareholders get a fair shake and a real opportunity to choose between managements competing for control. Specifically, legislation should be adopted which would:

One, outlaw greenmail;

Two, require next day reporting for each 2 percent increase in control of a target company's stock;

Three, extend the minimum tender period to 60 days;

Four, outlaw two-tiered or partial offers;

Five, limit creeping tenders and similar practices designed to hoodwink the small shareholders and gradually take over a company in clandestine manner.

I was pleased to hear yesterday's news of the Federal Trade Commission closing the loophole in the Hart-Scott-Rodino Act. This loophole allowed raiders to hide under partnerships, which were previously ignored in the regulations.

These regulatory changes reflect the spirit of the proposals recommended by the Akron Regional Development Board.

In conclusion, we in Akron are not looking for overregulation of securities markets, nor are we looking for a halt of all corporate takeover activity. In fact, there are surely some good aspects to corporate acquisitions.

But, clearly, there is something wrong with our system when an individual or a group of individuals can buy a substantial stake in a company, threaten a takeover, drive up the stock price, and then sell at a profit and run, leaving a trail of layoffs and scrapped plans for capital investments and research and development.

There is something wrong with the system when 931 hard-working people in Akron are thrown out of a job while an international financier and millionaire skips out of town with $94 million in his pocket.

One thing we found last year was that in spite of all of the efforts that were made and all the efforts and assistance by the former Mayor, Tom Sawyer, and Akron City Council, for the most part, we at the local level are powerless against corporate raiders and their assault on local companies.

The State of Ohio has adopted legislation which is considered to be antitakeover, in effect. This legislation has already helped some Ohio companies to avoid hostile takeovers.

However, the most logical place for change and regulation relating to our Nation's financial and securities markets is the Federal Government.

Therefore, I thank you for your interest in this topic, and in allowing my testimony before this Committee, and I urge you to consider the recommendations that I've made today, and the Akron Regional Development Board.

Thank you, very much.

Chairman ECKART. Thank you, Mr. Mayor, sir.

Mr. SAWYER. Thank you. Mr. Chairman, here's a bond of public and private development that has grown not only in this community, but in this country over a long period of time. It's the kind of development that expects a return, not only on very good private dollars, but very good public dollars. It, in fact, makes a community in many ways.

Just as stockholders have an interest in the future of major corporations, so do the citizens of a community have an interest as stockholders in the future in that corporate enterprise.

On top of that, every recent study that you and I and other officeholders have looked at urge that kind of development; the kind of development that really is content with simultaneous corporate development, capital and employee development, and productive capacity along with public development of things such as roads and sewers. We think of public universities and all those things that we

as communities invest in to make our homes the sort of place that can be a sound economic environment for which a company can make sound development.

Recent studies by American Trust suggest that we, in the industrial Midwest, need, particularly, to make that kind of development.

Could you talk to us, for a little bit, just about the kind of development that has been made in Akron and those kinds of activities that are at risk in the face of the kind of asset stripping that has been a source of profit in some kinds of hostile takeovers?

Mr. PLUSQUELLIC. Well, I think the first thing that comes to mind is the situation with Goodyear itself and the commitment not only the city made, but Congress made in the large project that was undertaken to improve its research and development capabilities here. The use of Federal funds under the UDAG Program and the capital investment that the city made in conjunction with Goodyear's $125 million Technical Center development show the substantial amount of money that was committed from the public sector to improve their research and development capabilities, and really to solidify their position here in this community.

I think what we have found is that their commitments in terms of the number of people that would remain employed here, the people who would be paying taxes and helping to support our system, have been kept and that they had a real solid commitment to continuing that level of employment until the problems associated with this corporate takeover attempt.

They have had to cut drastically into that work force to be able to afford some of the things to combat that takeover attempt.

So, that's probably the one example that most clearly indicates the impact that occurs not only on the private sector or a specific corporation, but a development that this community and the Federal Government made to solidify that company in this community, and yet, to some extent that public investment has gone to waste in that they've had to cut so drastically into that work force.

The problem, I guess, that we have on a long-term basis is that it's very, very difficult, as you might well imagine, to plan on a 6-year basis, as we do for our capital improvements budget.

To insure the plans we make to improve the infrastructure here in the community; to improve the various highway systems, and all of the park systems that we have, are very difficult commitments to make when this kind of a cutback occurs in the private sector as a result of the takeovers we are unaware of.

We have some estimates as to the long-term impact on our city's budget, but there is no question that there is going to be a decrease in the income tax revenues in this community, so that has an effect, long term, on the people who are still committed here in that we will not be able to deliver on all of these commitments during that 6-year period of time.

Mr. SAWYER. You went right into my second question which was about the effect on the long-term planning ability of the city.

Can you comment on the consequences, both in terms of the confidence of the community and how you go about the business of dealing with that, and the secondary effects within the economic

community, those people who service and who benefit from the dollar flow from a major capital principal like Goodyear?

Mr. PLUSQUELLIC. I think it's obvious, if we could calculate, specifically, the number of jobs related to this, that we could make at least a fairly accurate estimate on how much income tax is generated by each of those individuals that are laid off in the community and the impact throughout the community as those dollars revolve throughout the local economy.

Mr. Sawyer, I think that the first part of your question hits on the real problem here, and although quite frankly—and I must say I'm not sure that for this particular community that the layoffs as a result of the corporate takeovers have had as quite a level of psychological impact as print announcements about Firestone moving, but, certainly, they have had significant impact on the confidence level that individuals in our community feel.

People are very concerned about what's going to happen, and I think it really has shaken their confidence. What we need to do, I guess, is to continue to emphasize where the strengths are in this community and, of course, they are for the most part in the smaller companies that have expanded, smaller high-technology industries, here. But to do that totally and ignore what's happening with takeovers in this community, I think is wrong.

Also, you people need to understand that we are going to survive, and we think that we can be successful in overcoming this. We have done so many other times in the past.

We certainly don't want to downplay the significant impacts on this community that are directly related to the corporate takeover attempts.

Chairman ECKART. Do you have any questions, counsel?

Mr. SMOOTS. I don't have any questions, but just briefly, I would like to recognize and thank Mr. Eckart and Mr. Sawyer for being at the hearing. I think it is important, very important. I think its impact on the small business community is very effective. Thank you.

Chairman ECKART. Mr. Mayor, I take from your testimony that you would support, if Congress goes forward, as I anticipate we will, on a merger acquisition legislation, the inclusion of a community impact statement, which would require the raider to disclose at the early stages what they intend to do, such as who he would place in headquarters, who he would retain, or what cutbacks in employment, and personnel support would occur, or something like that?

Mr. PLUSQUELLIC. From our standpoint here at the local level I think it's absolutely necessary. The economy on a national level now has global problems that have an impact on this community, but we have some need, I think, always, to plan for the future.

I think, many years ago before cities started producing budgets for a long-term basis, we lived from year-to-year and didn't do a great deal of planning and trying to assist people in knowing what was going to occur in the neighborhoods for corporations, for small businesses to be able to know that there is going to be some project completed which impacts on them professionally. We think that it's a good process to be planning long term the same as it is for Corporate America to do that.

It's very, very difficult to do that and then, on a few days' notice, if that, find out that a corporation is going to be stripped of people, in particular, people who pay taxes from a community, and leave us in a position where we find that our plans aren't really worth the paper they are printed on because of actions that have nothing at all to do with what we are doing here on a local basis.

So, from that standpoint, there is no question that it would significantly help the city to be able to plan for the future change as a necessary part of our job.

Chairman ECKART. You said in your remarks, and I would concur with you, that all takeovers aren't necessarily bad. They can restore some efficiencies into the marketplace.

So, I understand you to say that you don't want us to outlaw all takeovers, but you want us to provide a level field for all targeting companies so that they can deal with those who seek to employ them.

Mr. PLUSQUELLIC. I'm not sure I said—if I did, as I spoke here this morning—I'm not sure I said "to outlaw all takeovers."

I mentioned that there are probably some good actions to corporate acquisitions and pointed out some of the problems with the system that allows certain individuals to run off with major dollars, millions of dollars, in profit.

I think what we have talked about and what the Akron Regional Development Board, in particular, has proposed, is to try to address not only the problems that takeovers create, but some of the problems in the system that allow things such as greenmail and the lack of the notice that you spoke to.

Not only lack of notice to municipalities, local government, but the problem of lack of reporting of the intention to the corporation. I think that really was the gist of my message—that we need to clear up a system that allows those things.

And the suggestion was that for me to do that by looking at notice allowing stockholders to determine over a long period of time which management, that they as a group, would choose rather than having somebody in a clandestine manner take over a company.

I think my remarks were addressed more on that line of thinking.

Chairman ECKART. Let me pick up on Mr. Sawyer's points and maybe you can answer that.

Did you specifically have CDU Projects that went to these particular companies, or into developments around these companies to encourage them to stay here?

Mr. PLUSQUELLIC. Goodyear Tire & Rubber Tech Center was a $100 million project.

Overall, including a $11.4 million UDAG grant, approximately 16 million public dollars were invested in the project.

An investment of millions of public dollars in the surrounding area, to upgrade the stream system, the infrastructure, and to provide a park-like setting for the research and development center that they developed out of an old manufacturing plant; so not only the public, meaning the city of Akron, but certainly the Federal Government, participated in the project.

Chairman ECKART. The substantial proportion of local, State, and Federal taxpayers' dollars in specific projects for the specific companies that, in fact, you plan around your budget?

Mr. SAWYER. Sure, and it is, specifically, in that sense that the notion of community shareholders going right along together with corporate stockholders and having long-term committed interest in the success of a corporation in a particular State.

Mr. Mayor, let me ask you just to submit to us later any data or information that your office may have regarding jobs, your EDA list, and so on.

Mr. PLUSQUELLIC. I can tell you just in the four instances here locally within the last year that we are talking about a loss of 1,200 jobs directly related, meaning the 1,200 people who work for those four companies, and they were directly related to corporate takeover attempts, and you can guess the spinoff effect that's obvious in this community to other companies and the overall employment numbers.

Chairman ECKART. If there are no further questions, Mr. Mayor, thank you very much.

Mr. PLUSQUELLIC. Thank you very much.

Chairman ECKART. The director of Business Planning from Goodyear Tire & Rubber, Mr. Dennis Rich.

TESTIMONY OF DENNIS W. RICH, DIRECTOR, BUSINESS PLANNING, GOODYEAR TIRE & RUBBER CO.

Mr. RICH. Mr. Chairman, members of the Subcommittee, thank you for the opportunity to testify today with regard to the effects of hostile takeovers on American small business.

Goodyear Tire & Rubber was the victim of a hostile takeover attempt last fall.

As you well know, management, our employees, our customers, and the communities in which we operate, our Federal Senators and Representatives and, in no small measure, our State and local government cooperated in a successful defense.

At least we were successful in the sense that the raider went away and we still had our core business intact. URW president Mike Stone appropriately deemed it a Pyrrhic victory.

Now, others have detailed the havoc wrought by that raid, the over 4,000 jobs lost, closed plants, reduced research and development and the yoke of $4 billion of debt which will severely constrain investment in new plant and equipment for at least 3 years—until we can reduce debt to prudent levels. Rather than repeat those details, I have included them in my written testimony which I ask to be included in the record.

Chairman ECKART. No objection.

Mr. RICH. Thank you, Mr. Chairman.

The purpose of my appearing before you to recite some of the unpleasant facts is to document just one of many examples of the hostile takeover phenomena.

Our economic system has produced miracles of productivity and wealth and, even now, I am reluctant to tamper with it. But the system can be abused and the record of much of the recent hostile takeover activity makes it clear that the system is being abused.

The victims of this abuse include America's competitive position in global competition. The victims are our industrial base and thousands upon thousands of hard-working Americans whose livelihood is being systematically destroyed. The system cries out for reform.

I do not pretend to be an expert on the ripple effect caused throughout our economic system through the loss of base manufacturing jobs. Dr. James Stranahan of Akron University's Center for Urban Studies tells me that the phenomenon reflects from one to seven service sector jobs supported by each manufacturing job. I have to believe that in a well-developed infrastructure, as we have here in Akron, that the loss of headquarters' jobs would be multiplied by two and a half to three in its ultimate impact on the community. Small businesses will pay a large price for the selfish action of a few raiders and their fellow traveler speculators.

Small businessmen have even less control over their own destinies in a takeover battle than we, the target firm, and that is too darn little.

What I do know is that you can't export most services. We will never regain American competitiveness in share of the world market by exporting services.

Moreover, it's the manufacturing sector, especially the small businesses, which provide the productivity growth which underlies not only our competitiveness, but our entire standard of living.

Although manufacturing productivity is currently languishing in the 2.5 to 3 percent per annum area, when combined with the rest of the American economy the average is less than 1 percent.

Without manufacturing, productivity growth would be negative.

There is a problem. Goodyear will do its best to retain its technological and market leadership.

Foreigners have claimed 24 percent of the U.S. replacement tire market largely since 1980. The French, the Japanese, and lately, the Koreans have made inroads in the tire market here.

Only by continuing our investment in plant modernization and product technology can we continue to hold them at bay. Fortunately, our investments over the past decade have given us such a lead that we can afford to direct our attention to the short-term cash-flow required to meet the burdensome debt service brought on by the restructuring.

Had we been attacked in 1977, we would never have made the $260 million investment to build a state-of-the-art plant in Oklahoma. That took several years to begin paying out.

Had we been attacked in 1983, we would have been unable to invest $250 million in Texas to convert an old bias ply-tire plant to one that will meet Korean competition head on as it gets up to full output this spring.

These investments take time. The same could be said for expansions in Alabama in 1976; in Tennessee in 1981; a new plant in North Carolina in 1982.

Conversely, in the present unrestrained takeover climate, plants such as those at Logan and Jackson, OH, would have been on the closedown list in those years, but now are booming with business. The point is, in the absence of raiders, we have succeeded in saving jobs.

It makes me angry to hear cliches such as "loss of American competitiveness." Goodyear competes in every market in the free world and wins.

We have done it by investing in technology, in equipment, in people. We didn't get concessions from labor, we got cooperation. We got hard work and, more importantly, ideas, ideas that resulted in our building nothing but top-quality product. And we got willingness to take on responsibility for competitiveness, to participate in decisions that affect competitiveness, to become active partners with management.

We did not get quotas or other protection from Government. We got a stable investment climate and a fair tax system, at least, we thought so a year ago. That is, basically, all we ask.

Goodyear has a positive trade balance of over $400 million, in spite of the fact we have to import natural rubber.

I ask the doomsayers to look around. Look at that Korean-imported car for example. Look at the tires. They're Goodyear. What's more, they're made in the USA.

We can be globally competitive. We can be globally competitive, without protectionism, if you can give us the environment in which we can make long-term investments.

It takes more than 2 years to even begin to make a payout on a new tire plant. We cannot do that if we have to look over our shoulder each quarter for a hostile raider.

A second point, since my last appearance before a House Committee, Goodyear has reported first-quarter profits, record profits. It upsets me that supporters of hostile takeovers will point to that and say, "See, ya got the fat out."

Let me say two things. First, you can't pay down $4 billion of debt with promises. You need cash and cash comes from profits. Anybody can make short-term profits, if they have previously made long-term investments, which we did.

Anybody can raise cash today. All you have to do is to sell your future, your diversification, which we did. We had no choice. With a debt like ours, if we don't have record profits, we don't have a company. Those record profits came from increased sales, increased market share, and reduced cost due to the completion of our new Tyler Plant.

Actually, the effects of the restructuring-expense reductions won't be felt until the second quarter, so none of the record profits is due to the raider's attack.

What the attack did for us is provide an $87 million interest bill to overcome. That was our million-dollar-a-day present from Goldsmith.

But, have we made the investors happy? I guess so, if by investors you mean the quarter-by-quarter fund managers who live and die by the near term. Ask any broker—they don't care if the stock goes up or down. As long as it moves, they can make money.

We are told that Wall Street loves a pure play, a company that has no diversification, because they can ride the stock up and down the steep cycles that a single industry, such as ours, is subject to.

But, how about the other investors, the little guy whose future, whose pensions, and lifelong savings are in Goodyear stock? Is it

right to play Russian Roulette with their investment to say nothing of the futures of employees and whole communities?

We believe we are in business to produce returns for investors and products for consumers. We are not in business to manipulate financial instruments. That doesn't contribute to real wealth for the investor or the Nation.

There is a basic conflict here that is at the root of the hostile takeover movement. Management is committed to prudent investment for long-term growth. Diversification is part of that strategy, yet diversification leads to the hostile raid.

This is simple mathematics. Legitimate acquirers are willing to pay an acquisition premium, known as a control premium, to gain control of a business. Therefore, a business, which can be subdivided into viable parts, is worth more broken up than it is as a whole. Raiders can take advantage of this principle to acquire a business and then sell the parts for more than the market for the whole. We know it's true. We just did it ourselves when we sold off our diversifications to pay down our debt. We didn't need a raider to show us how to do that.

It makes me angry when liberal economists, such as Robert Reich from my own alma mater, simultaneously advise us to stick to our knitting and let the efficient market carry out portfolio diversification while at the same time urging the Government to get into planning redevelopment of resources to accomplish global competitiveness.

The private sector is perfectly capable of redeploying resources. That was exactly what we were doing when the raider struck.

We don't need giant Government retraining programs, protectionism, industrial policy—the polite term for targeting—or tripartite boards, if you will just permit us, the environment, in which to do our own long-term investment.

Eliminate the bum's rush the investor gets now and substitute the openness of full disclosure with time to choose.

I don't pretend to know how to craft the careful legislation required to provide openness without burdensome regulation, but I know that effective reform is essential to prevent the awful economic waste of the current system.

Competitiveness requires long-term planning and investment. The current environment encourages just the opposite. Productive legislation to improve U.S. competitiveness is possible.

Require filing of a 13D with the Securities and Exchange Commission within 1 day after an individual or group acquires 2 percent of a company's stock. Under present law, a 13D is not required until 10 days after 5 percent of a company's stock is in hand. By the time Goodyear and its average shareholder knew the identity and intentions of our raider and his partners last fall, they had accumulated 11½ percent of our stock.

Second, I recommend extending the minimum period for a tender offer from the present 20 days to 60 days. A change in control of a corporation involves complex issues, including determination of the corporate value, and neither board of directors nor shareholders should be stampeded into hasty decisions notwithstanding the desire for speed on the part of the raider's arbitrageurs and investment bankers.

Third, prohibit greenmail. Payment of greenmail does not treat all shareholders equally, and its possible availability minimizes the potential risk for raiders.

Fourth, outlaw two-tiered and partial tenders. Like greenmail, they are not fair to all shareholders. And like the high threshold, all requirements for filing a 13D and the 20-day period for a tender offer, they help turn what should be a rational, studied consideration into a stampede.

Fifth, limit such practices as sweeping the street and creeping tenders. These operate to benefit the professionals at the expense of the ordinary investor.

Finally, subject the raider, whether he be individual, or corporation, to the same 50-percent margin requirement that a passive investor is subject to.

Crafting legislation that copes with the difficulties of identifying sources of funds with their use will be difficult, but the intent of the current law is clear, and it should be enforced.

In summary, Goodyear will survive the hostile takeover attempt. We will survive, precisely because we took the long-range view to invest in quality and innovation, because we took on the global market which supports our leading position in R&D. We have enough momentum going for us as a result of investment in R&D, new plant, training, et cetera, to carry us for 3 years, the time necessary to get our debt reduced.

True, we have been stripped of our diversification; our best hopes for stability and growth. True, we have been saddled with oppressive debt in an automotive industry that has been subjected to severe cyclical swings in the past. Risking the investment of our shareholders, the businesses of our suppliers and our dealers, the careers of our employees, the well-being of our communities in this manner is not something we would have chosen. It is not responsible management, but with the help of all those people we will make it.

With your help, others may not be subjected to the experience.

Thank you.

[Mr. Rich's prepared statement may be found in the appendix.]

Chairman ECKART. Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. Among the recommendations that you offer for the closure of the partnership loophole, which was apparently addressed in one way or another this week, it remains open as to how well it is closed, depending on the definition of partnership.

Mr. RICH. We are certainly very, very happy to see that action. It was minimal, and I think it's long overdue. I suppose we have to give credit to Senators Proxmire and Metzenbaum and Representatives Dingell and Eckart for the hearings that encouraged the administration to at least take the first step. Whether it's a sufficient step remains to be seen, but we want to acknowledge the positive direction.

Mr. SAWYER. The final point you raised dealt with the margin rules, and yet, as recently as January of last year, Paul Volcker suggested that editorials in the New York Times, and the Wall Street Journal thought he was trying to bring the world to an end at that point.

Mr. RICH. I think there is very good reason to be concerned about the sort of legislation that could be developed to accomplish that. The definition of things like junk bonds or the attachment of sources of funding to uses can be difficult. After all, Boone Pickins has a war chest of $1 or $2 billion.

He may be attempting several takeovers, but he can assign that war chest to just any one of those attempts. I think crafting the legislation to sort that out is a very substantial challenge.

I guess, I have to go back and say the intent of the law is clear. There is no reason why an active investor should escape the requirements that a passive investor has in terms of putting equity behind share purchases.

Mr. SAWYER. The list of suggestions you offer here still represents a very delicate balance, one that has to be crafted carefully in order to make it work as I think we all intend.

One of the elements that you and your colleagues at Goodyear have spoken of in the past has been directed toward economic impact statements. One of the difficulties that we face in attempting to craft language which would achieve that is the apparent division within the corporate community over what that means and whether or not it is good or bad.

Could you comment on that?

Mr. RICH. Well, Congressman, we certainly agree with your intent. I think, on the other hand, my colleagues have carefully avoided endorsing an economic impact statement.

I think we are dealing with a number of raiders who have lied when filing their SEC statements of intent and to suddenly expect these same people are going to tell you the truth because you impose economic impact statements strikes me as slightly naive.

It is very difficult to think it is going to have a great effect. I'm a great believer in competition between raider and management. Given time for the investor to listen to proposals by management and the raider to try and persuade the investor who is going to do a better job with their resources. I think, in that sort of contest we will win every time.

Mr. SAWYER. I think you make a sound point.

Largely, the definition really becomes the measure of whether it would be a benefit or an absolute burden. The notion of an economic impact statement arose from joint discussions that I had with Goodyear.

You also mention in your testimony, the consequences of the interest bill that imposes a cost, so to speak, from Goldsmith of $1 million a day. That puts things into a perspective that is perhaps easier for people to deal with.

Could you comment on some of the details of that interest debt and how that affects the concrete decisions of corporate planning within Goodyear?

Mr. RICH. Well, I don't think there is any question. In fact, the figure to pay down a $4.2 million debt by $2.4 billion over 3 years is $2½ million a day and that's the additional amount brought on by restructuring.

When you are faced with that, you begin to defer things that can be deferred, specifically, distribution development, plant expenditures, training, and advertising, as well as R&D.

Now, we're committed to a very large R&D program. We need that to support our original equipment business. That committment is going on. What has been cut are the sort of things we are looking for 2, 3, and 10 years down the road, such as new materials, the things that are required, in the long term, to remain competitive in the global market.

We're going to have to defer investment but I think we will be back to our original program very shortly because we have had a good first quarter, with a good second quarter coming on. I'm encouraged that we are actually ahead of schedule in paying down our debts. I do want to say, however, that that was no thanks to Sir James.

Mr. SAWYER. Mr. Chairman, I have one final point. The corporate raiders have argued that what they are doing is creating wealth through the discipline of the marketplace and then they point to the consequences, whether it be in GenCorp, or Goodyear, or would increase stock in price. Could you share with us whether the Goldsmith episode has created or stripped wealth in the case of Goodyear?

Mr. RICH. Well, I don't think he's created wealth in any way, shape or form. He's walked away with $93 million of somebody's money, and as he sits on his yacht in the Mediterranean and enjoys that, I think some of us have to wonder whose money has he got. I know the stock market went up. We have some happy investors.

I guess, I have an inherent distrust for people who either try to sell me a bridge or explain the stock market. It's difficult to say why the stock market goes up in any case.

Goodyear profits did rise in the first quarter. Part of it was due to getting past the start-up cost of a brand new plant in Texas; part of it was getting better prices because we are in the fifth year of a recovery and economic expansion; part of it was because the dollar is weak, and therefore, the results of our foreign subsidiaries, expressed in dollars, registered a substantial advance.

None of it is as a result of the restructuring because those impacts, to the extent that they will help us, will be in the second, third, and fourth quarter. The stock price went up because we bought back a substantial portion of the stock. The stock repurchase is merely a substitution of debt for equity. That's not creating wealth; in fact, it's increasing risk.

I think we can survive that risk and apparently the added risk does not concern the equity investors. Nevertheless, 80 percent was previously considered as totally unacceptable, as a debt to total capitalization ratio, so we are doing everything we can do to get it back to a 50 percent maximum.

So, I don't see any contribution. I don't see one shred of redeeming social value that Sir James brought to our country, or our company, or certainly this community. He may be associated with the fact that the stock price went up. I'm not going to try to explain the stock market.

Mr. SAWYER. It should come at any price. Thank you very much. We appreciate this.

Chairman ECKART. The $4 billion in capital that you were forced to raise could have provided 40,000 small businesses with loans of

$100,000 each. That's an interesting statement about what our capital markets stress that they face when they go out. You did not engage in any kind of creative financing to raise the $4 billion.

Mr. RICH. Interestingly enough, we did, in fact, by and large, go to Europe in order to borrow that money.

Chairman ECKART. Not from the Hanson Trust?

Mr. RICH. No; the European banks. In fact, the rest of the world generally tolerates a higher level of leverage debt than does the American market.

We were able to get substantially better rates overseas than we could here. So, I can say with some confidence we weren't stealing American capital available to small business and primarily we did get a very good rate because our name is, fortunately, well-known and the Europeans love a consumer name that investors recognize.

This was not junk financing, nothing terribly unique. We did a straight term and revolving credit line with them.

Chairman ECKART. Let me ask you about something of importance that we see in Ohio.

If we moved forward with a piece of Federal legislation, do you think that State laws, such as was passed here, should be preempted? That the Federal laws should be a simple lure, a minimum against which States can do more? That we should in fact encourage even greater involvement of the States in setting terms and contracts at their level?

Mr. RICH. Well, Congressman, I have two things to say about that.

One is theoretical, one is very practical. First, from the practical point of view the Ohio legislation was and is terribly important to Goodyear and Lord knows I don't want to lose that before we get some other kind of leveling of the playing field.

Theoretically speaking, I think matters of corporate governance have generally been regarded as the State province. I expect resistance in having the Federal Government, in the form of the FTC or the SEC or anybody else, get very deep into matters of corporate governance. I think that's a dangerous precedent.

Chairman ECKERT. So, you would not see a Federal preemption?

Mr. RICH. Certainly not a Federal preemption. I think there is room for the Federal Government because the closing of the partnership loophole has to do with antitrust legislation. It has nothing to do with hostile takeover, but it is valuable to the deliberation and disclosure that we need in order to bring some sanity to this takeover phenomenon.

Chairman ECKART. The Akron Beacon Journal in their prizewinning report chronicled a couple of individuals, a person who runs a barbershop and——

Mr. RICH. Rufus is going to be awfully pleased that he's left the shoes and taken over the clippers.

Chairman ECKART. There was, also, a story in the ABJ about a restaurant owner who talked about what Firestone's move meant to him. What can you tell the committee of their statistical value or analytical nature, of what this meant to small folks working for you on a contract basis, individuals who were not direct employees, but work for Goodyear?

Mr. RICH. Well, I think the thing that really was heartening was the fact that the entire community united together. Our customers took out ads in Wall Street Journal.

Our dealers made it be known in no uncertain terms that thay had no intention of dealing with Sir James and they preferred the existing management. We didn't expect that.

Suppliers, retirees, and other members of the communities came forth, thanks to Congressman Sawyer and his predecessor from our congressional district. They did a wonderful job, I think, of marshaling that support.

Chairman ECKART. If I can switch gears for a second. The Senate is finishing markup of trade legislation.

You mentioned in your testimony which I read last night, and would like to return to, that Akron, as Tom advises me, is a favorable contributor to America's trade balance in a surplus way.

And Goodyear, despite the overwhelming trends going the opposite way, has a positive trade balance of over $400 million and, I guess, as your testimony says, is despite the fact that you have to import one of the largest constituents of making the tire.

How do you evaluate what we did in H.R. 3, the House Trade bill, and its impact on your ability to maintain a competitive edge, given the burden that you've testified to, that you've now had to assume to retain your status?

Mr. RICH. Well, I think H.R. 3 is an important step. It's one that has to be taken. We need to convince our trading partners that we aren't going to settle for a one-way street. We must get them to open up their markets—their markets for goods and their markets for capital. They don't take us seriously. We have had, in a sense, nothing to trade because we've had a very, very open market. In return, we've had less than open access to their markets.

I would have to say that unfair trade practices, a primary target of the legislation really only constitute about 15 percent of our total trade imbalance and, of that, I would suggest that maybe a third represents practices which we have an equivalent to. We have our own quotas and subsidies. If we are going to expect others to eliminate those sorts of practices, we have to eliminate them ourselves.

I think another third of the practices are probably culturally engrained, such as the savings rate in Japan or the VAT tax in Europe. We are not going to upset their economic structure in order to achieve equal trade conditions. Maybe we need a VAT structure ourselves in place of our current excise tax.

A third of the unfair trade practices may be $5, may be $10 million of our $170 million trade deficit is probably addressed by H.R. 3. So, much as I would support that approach, I think that it does not tackle the whole problem.

Chairman ECKART. You don't see the good part of them in support of medieval protection as some form of danger to aid an international trade depression?

Mr. RICH. I think there are two points. One, a lot of us talk about retaliation. In the case of the Japanese, there is nothing they can retaliate with. They haven't given us anything, so they can't take it away. Representative Gephardt, I think, has been very clear himself, on this subject indicating that real success will be marked if

we never have to use the retaliation provision, and I endorse that. Not only that, but you saw the semiconductor move by the Administration. I would submit that Gephardt has already done its work.

Chairman ECKART. Mr. Goldsmith treated it as if it was a recent acquisition and it seems, at least, if published reports and our personal conversations would be true, he really didn't know what he was getting into. He certainly didn't know or understand the tire business.

You mentioned that your tire business is going to have to diversify, which was a trend for 20 years, and which folks told you you ought to be doing. Avoid the cyclical problems of being a single industry. Focus on what does it really mean to you, not in terms of dollars and cents, but in terms of Goodyear's position in Corporate America to lose something that—I mean, I suppose I would see it almost as if you got out of the race car tire business and no longer had folks winning the Indy 500 on Goodyear radials. Now, is this part of a loss of corporate image as well as to your bottom line?

Mr. RICH. I would say the loss is more than corporate image. Let me refer to the diversification as resource redeployment.

We have a factory in Madisonville which was originally built as a shoe products plant but imports from Korea and Taiwan have captured 70 percent of the available market. Subsequently, we turned Madisonville into an industrial tire plant.

We make tires there for golf carts, for garden tractors, and things of that sort. Subsequently, competition from Korea and Taiwan, have stolen a large part of that market. That plant has undergone very significant changes with substantial cooperation from labor. It was teetering on the brink, but just before Goldsmith struck, it hit profitability. Together we were able to save that plant, but it's been a process of redeploying resources, which takes time.

It will eventually reward the shareholders. We need to be given the opportunity to change things even if there is temporarily a cash outflow. Diversification is just one example of that.

Further, we are never going to be able to attract the kind of people we want to a company that isn't growing. The tire industry in the United States is not growing. Fortunately there are great opportunities in the future, but not right now. We need growth now to keep these people—to attract and retain the best people.

Chairman ECKART. In terms of your manufactured products, what percentage of all the products you market is made here in the United States and what percentage is made outside of the United States in international markets?

Mr. RICH. In the tire business itself about 60 percent is here in the States. We do make more in the States than we sell here as a result of having a rather heavy investment in belting and industrial hose products here in the States.

Chairman ECKART. Remarkable. I mean, you are swimming upstream in a wide variety of products and doing so, successfully.

Mr. RICH. By investing.

Chairman ECKART. Thank you very much for your time and testimony.

Mr. SAWYER. Let me just say, in closing, right in the midst of the entire Goldsmith deal you said Secretary Malcolm Baldrige and

Richard Darman testified that America's inability to compete effectively in the world market contributed seriously to U.S. trade deficit and said that management of major industries gave little thought to long-range strategies including emphasis on quality or the development of new technology and with a diversion to risk.

It's clear, both from the kind of documentation we've seen in the testimony and from what we've seen here today, that those kinds of credit risks can't be leveled at Goodyear which had developed the kind of long-range goals that have committed them to letting the world in its industry, and such standards for a lot of other enterprise.

Thank you very much.

Chairman ECKART. We will have two witnesses on our last panel. Mr. Steve Clem, director of Research and International Affairs, the United Rubber Workers, and Mr. Vincent DeLuca, the vice-president of Jones & Rose, Inc., here in Akron, I wonder if we could ask you to take your seats?

Gentlemen, I will remind you that both your written statements will be made part of the record.

TESTIMONY OF MR. STEVE CLEM, DIRECTOR, RESEARCH AND INTERNATIONAL AFFAIRS, UNITED RUBBER WORKERS INTERNATIONAL UNION

Mr. CLEM. Mr. Chairman, Mr. Sawyer, my name is Steve Clem. I'm the director of Research and International Affairs for the United Rubber Workers International Union. We represent approximately 110,000 workers across the United States and Canada. The URW is headquartered here in Akron where we were founded some 50 years ago.

I want to thank this subcommittee for scheduling this important hearing. The URW has previously presented its view on hostile corporate takeovers to the House Subcommittees on Monopolies and Commercial Law and Employment and Housing, as well as to the Senate Antitrust Subcommittee and the Senate Banking Committee.

We welcome this additional opportunity to put our position before the Congress.

The URW views corporate takeovers, generally, as a method to make enormous profits for the already rich without creating anything in the way of jobs, products or enhanced competitiveness. Corporate takeovers are, in our view, sterile transactions which continue to penalize companies that pursue their long-term competitiveness by forcing them to concentrate unduly on the short term.

Spread throughout the industrial base we see this as a certain prescription for economic ruin. If I may borrow from the testimony of Tom Donahue, the Secretary-Treasurer of the AFL–CIO before the Senate Banking Committee in the early part of April, and I quote:

> Today's raiders have neither financial strength nor managerial achievement: they are stock market operators, and along with their associated arbitrageurs and investment bankers, are generating deals, not because of our desire to operate the target but rather simply to profit from the deal itself.

The billions of dollars used to finance, as well as fend off, takeovers is money that is consequently not available for investment to strengthen the U.S. economy.

The money, time, the effort, and imagination that corporate managers are forced to devote to fighting takeover battles would be more wisely spent in manufacturing higher-quality products, and providing better services at a lower price to the benefit of all of our citizens.

The United Rubber Workers, unfortunately, have had some recent firsthand experience with hostile takeovers. Goodyear was a target of Sir James Goldsmith's hostile takeover effort. Firestone, B.F. Goodrich, and Uniroyal were all involved with Carl Icahn at some point over the last few years, and more recently GenCorp was hit with a hostile takeover attempt.

At this point it's too early to tell what the eventual outcome will be in the GenCorp situation. At this point, the restructuring has affected primarily salaried personnel, including 225 in the Akron area.

Consequently, I would like to focus most of my remarks this morning on the aftermath, from the URW's perspective, of the attempted takeover of the Goodyear Tire & Rubber Co. As you know, last November Goodyear Tire & Rubber Co. was the target of a takeover attempt by Sir James Goldsmith. The attempt did not succeed, but Goodyear did not exactly emerge victorious.

Goodyear was forced to undertake a restructuring program which so far has: First, resulted in three plant closures, numerous layoffs, and instances of contract concessions; second, left Goodyear with $4 billion in debt; third, cut research and development; fourth, cut capital expenditures; and fifth, meant the sale of some Goodyear subsidiaries while Goldsmith walked away with over $100 million for his unwanted and unwarranted efforts.

Thousands of Goodyear employees will suffer considerable hardship as will the communities where Goodyear closed plants and eliminated jobs. But, direct employees of Goodyear were certainly not the only ones affected.

The effects of the takeover attempt have also been felt by Goodyear's vendors of services, equipment, and supplies, especially where a plant closure was involved. Often, these were small local businesses geared to the specific industry involved and which may be unable to adjust to serve other customers, if there are any. If they can't adjust, they will, likely, go out of business, causing further economic hardship for the community and resulting in the loss of still more jobs.

The economic cost to these people and their community will certainly total a great deal more than $100 million that Goldsmith made in his paper transactions.

People are our bottom line. Where will these people and possibly many others, find new jobs? The statistics indicate that getting a new job in this country is often a lengthy process and that, in most cases, the new job offers less in wages and benefits than the old one.

Consequently, the worker's standard of living is lowered; other businesses in the affected community stand to lose as their customers now spend less; the tax base of the community and the public

services it is able to offer are likely to be cut. This is all part of the negative or reverse multiplier effect that ripples through the economy and touches the lives of many who are not directly associated with a plant closure or massive layoff.

The economic cost is enormous, but plant closures and indeed, enforced unemployment for whatever reason, present an even more terrible waste: The waste of our Nation's most valuable resource, its people. This human cost cannot be measured.

A definite relationship between unemployment and physical and mental illness has been clearly documented. According to the Institute for Social Research at the University of Michigan, plant closings are accompanied by increased incidence of arthritis, high blood pressure, and ulcers among terminated workers.

Psychologists and social workers have found noticeable increases in divorce, alcoholism, child beating, depression, drug abuse, suicide, criminal behavior, and poor mental health among the unemployed.

Dr. M. Harvey Brenner of Johns Hopkins University prepared a study in 1984 for the use of the Joint Economic Committee of the U.S. Congress, titled "Estimating the Effects of Economic Change on National Health and Social Well-Being." Among the many statistics generated from Dr. Brenner's investigation is one which shows that among those who are forced into unemployment through the closing of a plant, the suicide rate is 30 times higher than that of the rest of the population.

In a takeover battle then, workers, suppliers, customers and the community, factors of little concern to the takeover artist, are ultimately the losers. Workers often finance the costs of a raid by job losses or pay cuts. Even workers who may keep their jobs for now, pay the price of job insecurity as they run the very real risk of losing those jobs later on as the company finds itself becoming less competitive in the future, having put all of its efforts into the short term.

Business should be able to operate to benefit its customers, its owners, its employees, and its community—not the corporate raider, who generally knows little about the company he's raiding or the industry in which that company operates, and who does not seem to care what hardships his tactics may bring to the people who work for the target and for the community at large. Something needs to be done to correct a system which allows the kind of extortion that we politely call a hostile takeover.

We are asking the Congress for help in restructuring our laws so they do not allow the dangerous speculative excesses that fuel the takeover epidemic.

We recommend the following as steps that can restore order to the takeover process and afford protection to the workers involved:

We think there should be a successor clause required in all union agreements. In fact, this probably would be a good requirement in all agreements with suppliers, as well as labor and other types of workers, that companies are involved with.

Bar corporate raiders from tapping a company's pension fund and siphoning off so-called excess assets in order to pay off debts incurred in the raid.

Eliminate special golden parachutes that protect corporate executives, but not the workers, against loss of income if jobs are eliminated.

Eliminate greenmail.

I'm sure most of these are proposals you have heard before and will no doubt hear again.

Bar raiders from all windfall profits when they sell off stock that has shot up in value because of speculation fueled by the takeover war they started.

Tighten regulations on junk bonds to prevent excessive use in financing stock purchases.

Notify stockholders more quickly of a takeover attempt by lowering the disclosure threshold and shortening the time period for disclosure.

Corporate directors who receive an offer from incumbent management for an LBO should be required to deal with that management in an arms-length fashion.

The raider should be required to disclose the principal economic assumptions underlying their asset valuations and projections, the sources of, and conditions on the raider's financing, the business plans for the target and any plans with respect to the closing or sale of any facilities of the target.

We also feel that shareholders of a target company should be allowed the opportunity to vote on whether or not they should be acquired and if they are shareholders of an acquiring company, they, again, should be allowed to vote as to whether or not their corporations should take over newer corporations.

The activities of the corporate raider represent a serious threat to our Nation's future economic competitiveness. We are very concerned that our ability to remain a major world economic power is being compromised and damaged beyond repair.

I think that Goodyear is a world competitive company and perhaps doesn't need help to be economically competitive throughout the world. Goodyear is unusual in that respect. If they were not, I don't think we would have a $170 billion trade deficit with the prospect of having a higher one next year.

Thank you for your attention.

[Mr. Clem's prepared statement may be found in the appendix.]

Chairman ECKART. Thank you very much.

Mr. DeLuca.

TESTIMONY OF VINCENT DeLUCA, VICE PRESIDENT, JONES & ROSS, INC., AKRON, OH

Mr. DELUCA. Good morning, my name is Vincent DeLuca. I am vice president of Jones & Ross, Inc., located in Akron, OH. We are an engineering/architectural firm primarily involved in the design of rubber and plastics manufacturing facilities and processes. Our major client is the Goodyear Tire & Rubber Co.

In October 1986, Jones & Ross had 30 employees. Our backlog from Goodyear alone was equal to 3 months of our total annual revenue. Within a 5-day period, orders representing 2 months of this backlog were canceled and the remaining 1 month was put on hold. This work amounted to 35 percent of our present workload.

Also, during the same period, a 10-man-month program that Jones & Ross, Inc. had invested was canceled by Goodyear.

All of these incidents were directly related to the attempted takeover at Goodyear by Sir James Goldsmith. The disruption of Goodyear by Mr. Goldsmith, obviously, had a major impact on our company, Jones & Ross, Inc.

During this November-December period, we eliminated 20 percent of our staff. The company has not recovered financially as yet. We took severe losses in November, December, and January. We decided to take these losses in lieu of further layoffs, because the talent of our engineers/designers is our major asset and without them the value of the company is greatly diminished.

When we reflect on incidents within the last few years with our other clients such as Goodrich, Uniroyal, GenCorp, and Firestone, a definite trend is apparent.

Carl Ichan attempted to take over Goodrich and later Uniroyal, forcing these corporations to divest, merge and scale down operations. A few years ago, Firestone had publicly proclaimed their main objective was to increase stockholders value, which essentially means restructuring and selling assets. GenCorp recently withstood a takeover attempt at the expense of selling its tire division, probably to a foreign company.

These events have almost eliminated the major rubber companies as clients and revenues from them have become insignificant.

All of the attempted takeovers and subsequent restructuring reflect an underlying pressure in our economic system that forces corporations to sacrifice long-term planning, research and development, and capital expenditures for the short-term increase in the price of their common stock. If the corporations do not take action on their own, then raiders and investment bankers will simply acquire the company and maximize profits in the short term period.

As these lean and mean companies begin to lose the competitive edge because of reduced investment in research plants, and equipment, the mega corporations of the Far East and Europe will eventually overtake them in the world market. This will, in the long term, cause a decline in the value of U.S. corporations. The corporate raiders and investment bankers will have made fortunes and U.S. industry will have been dismantled.

Jones & Ross, Inc., have survived the last few years by working with smaller, polymer-related companies. However, we are now noticing a trend within the smaller companies. That is, short-term profits, little or no R&D, and, simply, sell the entire operation to a foreign company. This foreign company obtains the market, scales back U.S. manufacturing operations, and imports their product from the company's main foreign facilities.

All of the above conditions create an atmosphere of reduced U.S. expenditures for plants, equipment, and R&D. Since Jones & Ross, Inc.'s only reason for existence is the development and design of new processes and industrial facilities, the future of our company does not look bright. In fact, the future of engineering as a profession in the United States does not look promising as corporations are forced to focus on short-term performance at the sacrifice of research and capital improvements.

My testimony today offers no solutions. Our company can survive only in an economic climate of aggressive capital spending and new product development.

The illusion that the United States will become a service and technology oriented economy is just that, an illusion. This apparent technological edge that the United States claims to have is not because we are more intelligent than the rest of the world, it is because we have a manufacturing and industrial base to implement this technology to produce better and more cost-effective products. As we lose this industrial base, we will, in turn, lose the technological leadership we have taken for granted for such a long period.

In closing, Jones & Ross, Inc., is attempting to widen and diversify our client base in order to survive. However, as the industrial Midwest disappears along with the regional nature of our business, we find it more difficult to identify potential customers. Also, as corporations requiring heavy capitalization become dismembered, our client base, in turn, disappears.

Thank you.

Mr. SAWYER. Mr. DeLuca, your story is a difficult one, correct?

Mr. DELUCA. That's right.

Chairman ECKART. Yours is a set of circumstances that precedes a number of small businesses here in Akron. We have four other similar stories that we will put in the record, but we appreciate you coming forward to speak. I know it's not the easiest set of circumstances to come and talk about, but if Congress is going to legislate in the real world we need to hear from all sorts of real people, and we thank you for that.

Mr. Sawyer.

Mr. SAWYER. Thank you very much. I'm not sure that I have questions. I'm not sure that you haven't just simply laid out, in as straightforward a fashion as you possibly can, what's at stake in this kind of economic climate. That is, the real potential for growth, the real strengths of this community, are very much on the line, and that without the growth potential that's embodied in companies like yours, the discussion that we've had as a community, globally in the marketplace, will get away from us.

I thank you very much for being here, Mr. Clem. One of the purposes of today's hearing is to complain, just as Mr. DeLuca has done, about the kind of atmosphere that permits hostile takeovers or at least the kind of raid that we've seen exemplified here.

The Goodyear case affects far more people than just those who are directly employed by the companies. I understand that one instance, beyond those that you've mentioned, either in your oral or written testimony has to do with the effect that the Goodyear bid had on coal producers serving coal-fired factories that were hit very hard. Could you discuss that with us?

Mr. CLEM. Well, just very briefly because I'm not terribly conversant on this. I talked with our local union president in Cumberland, MD——

Chairman ECKART. It just closed recently.

Mr. CLEM [continuing]. May 21, and I was asking him about some of the effects on small businesses in the area. One that he mentioned was the fact that this particular plant uses coal and fuel and the coal producers in that area were pretty hard hit. He gave

me some figures on the phone and I must admit I don't remember what they were right now, but it was an enormous amount of coal.

He mentioned that he also had a couple of other cleaning services in the area that provided services for the Kelly-Springfield plant. The vending machine operators were also hurt.

Cumberland is a small community. There are only 20,000 in the community. They have a cable television station up there and one result of the announcement of the closure in Cumberland was for the people, who had been cable subscribers, to cut way, way back, and that cut presents a problem for that cable TV station. Those are some of the results from Cumberland. The examples here in Akron you've heard from Mr. DeLuca and a few more.

The URW was not terribly hurt by what happened in Akron. We've only lost about 100 jobs which is certainly a concern, but it doesn't compare with the effect, I suppose, on the individuals involved with the closure in Cumberland and the closure in Toronto. Toronto, of course, is in Canada and this is a U.S. hearing, but those individuals are still affected.

Mr. SAWYER. Well, clearly it has an important effect on the direction that we are going and the potential we are having as a community.

Let me say, we've taken the liberty of putting together a cursory matrix of the range of legislation that's being considered federally. This is really almost a superficial representation of that. You can see that it covers a wide range of the problems that were mentioned both by Mr. DeLuca and by you. I think everyone agrees that the delicacy of that undertaking really is going to require our careful attention over the coming months.

But, are there particular pieces of legislation that the URW is prepared to comment on, at least as they stand before the Congress today?

Mr. CLEM. You mean specific bills that are before Congress?

Mr. SAWYER. Right. The answer to that may be no.

Mr. CLEM. Well, there are certain things. We've testified before a number of committees and there are certain things that we would like to see in whatever bill eventually comes out of Congress, and some of those, the ones that we are particularly interested in, I suppose, have to do with worker protection.

We are particularly interested in seeing that there is some sort of successor clause required in union contracts. Without that, a new owner can come in and just sort of start over, terminate the agreements he's not bound by, the agreements that the workers are.

A number of other segments of society are very much at the hands of the raider in this kind of situation. Other things that we are particularly interested in is getting rid of greenmail. We would also, particularly, like to see the thresholds lowered and time periods shortened.

Mr. SAWYER. I don't want to interrupt you except to say your testimony was really very much on point.

My question, though, went not so much to the elements within an ideal piece of legislation, but whether or not you've taken positions on any of the legislation. If you haven't I understand.

Mr. CLEM. We have not.

Mr. SAWYER. I would appreciate, as I'm sure we all would, hearing from the URW and others on the specific legislation.

Mr. CLEM. We have not formulated a position on particular legislation.

Mr. SAWYER. Thank you.

Chairman ECKART. Mr. DeLuca, the set of circumstances are pretty stark.

Mr. DELUCA. I received a phone call. It's pretty stark.

Chairman ECKART. Tell me about your competitors.

Mr. DELUCA. One of our competitors had 50 percent of their work canceled. The size of his company is about three times the size of ours, so within the Cleveland area that's still 60–70 jobs that were cut in a 2-week period. Another firm in Akron had a dozen people laid off.

Chairman ECKART. These are professional engineers?

Mr. DELUCA. Yes; these are highly-trained folks on the leading edge of trying to apply the new technologies.

In our business, as I mentioned before, we are targeting our markets toward other smaller rubber companies. That's worked, but our philosophy, if you stay in Akron, you have to do business within the area, all of a sudden that disappears.

Back in November, it was rather a shock. We planned our full company strategy with Goodyear as a base client buying computers at about a $100,000 development.

I mentioned a 10-man-month training program really equaled revenue of about $40,000–$50,000. If you took those people out of the production process, trained them for a month on a particular process, and the process was then canceled, it would be very costly.

The point that I see is U.S. corporations are in a world market and whatever should develop we have to look at them on a general basis, but there are bridgestones out there. There are companies out for parts of the U.S. market and as the U.S. corporations are dismantled and nondiversified, again they are less competitive.

Chairman ECKART. And you can't get into that. You can't break into Bridgestone, can you?

Mr. DELUCA. No; they are in the south. They have no reason to work with us in Akron because, again, we have relations with Goodyear Tire and Firestone. They don't care to talk to us. Our company has worked with every U.S. tire company. We have done a lot with Uniroyal and Cooper Tire, but our business is regional. They don't want to work in Akron. For many, they don't want to work with me if I'm in California or in North Carolina.

Goodyear is, first of all, next in clients because we have projects in Toronto, California, and Georgia. Engineering studies here in construction is done all over the world.

Mr. SAWYER. Anywhere in the world.

Mr. DELUCA. So, although there are no real projects in northeast Ohio, Goodyear's trials and tribulations really affected us because they cut back. In Texas, they canceled projects which means no additional jobs to those who are in manufacturing plants.

Chairman ECKART. You mentioned the fact that you are involved in a number of projects that transpired here at the University of Akron which has been weedeating the country.

The bottom line is that it was more than Goodyear. It affected the majority of what had been a hope for economic development for the city of Akron at large.

Mr. DeLuca. Right. We see—Jones & Ross, Akron, OH—they see that Akron, OH, that's where all the people are at. Unfortunately, the whole world knows about the problems in Akron.

Akron, OH, is still respected as a source for rubber technology, but our fear is that it's going to be a negative indication because, really, it is based on raider corporations.

Chairman Eckart. You have survived, or you have developed a strategy for survival. What are some folks, similarly situated to you, trying to do to survive?

Mr. DeLuca. Of course I'm biased, but we feel we are doing the best job of surviving, but a lot of them are just scaling back. A lot of them are going into other industries. One attempt that hasn't really been successful.

Chairman Eckart. Changing their orientation?

Mr. DeLuca. Getting out of it. Going into mechanical or chemical, but chemical industry is not that good.

Chairman Eckart. I would advise them not to look at that as long term.

Mr. DeLuca. One strategy we had, it's not been successful yet, but really getting, you see developers of shopping centers. That's not our key business, but we have to survive. We are not successful. We are getting into everything possible. I don't want to talk too much because I don't want to get into competition.

Mr. Sawyer. It's just between us.

Mr. DeLuca. So, we're really losing a sense of being a professional engineering firm. We're diversifying. That's the only way to survive. We would rather be an engineering firm.

Chairman Eckart. What are the complications of the decision to move the Firestone headquarters?

Mr. DeLuca. Not much for us. Their engineering staff still stays here. What's left in the short term, we've picked up where the other companies—for example, when they sell a facility—they have disassociated services and the plans we are working on, it's not long term. We are going to separate facilities.

We are building in Calhoun, GA, that is, increasing jobs and for the further expansion, so you know, right at this moment we're very busy, but it's all short term. Tearing down buildings, relocating roads, that doesn't make us look optimistic for the future, only as an engineering firm.

Chairman Eckart. Mr. Clem, unions are getting in the takeover business, airline pilots want to buy United Airlines, and they own United Western and Hertz Rent-A-Car. Do you see this as a trend, or as an effort to preserve jobs, by buying, in effect, their own jobs? What can I ask you about that?

Mr. Clem. Well, I don't think that it's a trend. I think they've been undertaken simply to preserve jobs in this particular industry.

Chairman Eckart. So, it's self-defense from the Ichans and Pickens?

Mr. Clem. Self-defense.

Chairman ECKART. You touched on something that I know Tom is going to be terribly interested in. On the Education and Labor Committee, we have hundreds of billions of dollars of unfunded pension liability out there. In your comments you touched upon the effect of putting new debt against pension assets or just raiding the pensions. Thus, leaving the Government holding the bag with the pension, particularly, with the LTV's of the world whose liabilities raise very serious financial questions for us.

You would want to see just a straight out prohibition on the use of assets of pension systems, the pledge of those assets in refinancing the takeovers?

Mr. CLEM. Well, yes; there may be some circumstances that would arise that would change that answer a little bit, but, basically, the money that is in pension funds represents deferred compensation for the employees.

The fact is that it's their money. It's been put into a pool. It's invested. It grows. If it grows beyond the point where it's sufficient to provide the retirement benefits, then they have excess assets and the company can go in and take those unless there's a specific clause prohibiting them, but of course, they have to provide for the retirement benefits by annuities or whatever, but our position is that it is deferred compensation.

The fact that it accrued interest is just like putting it into the bank. It's still your money. It should be used to either increase the pension or to provide cost of living increases for those already on retirement or whatever.

The money in a pension fund, of course, is also subject to the ups and downs of the interest rates, and just because it's up now doesn't mean it always will be, and they have run into some problem with that. Some that were overfunded are now finding themselves underfunded.

The excess assets were taken out and they're now having problems with it, so, just basically, unless something totally unforeseen would arise, we would say yes on an outright prohibition of using pension funds to finance a takeover, either from inside the company or outside the company, because oftentimes the fact that you have access to an overfunded pension plan may be the trigger for a raid.

Chairman ECKART. Tom, I think that's it.

Mr. SAWYER. Well, just let me comment on a point I think everyone today is talking about, perhaps no more pointedly than Mr. DeLuca, and that's over the last 3 or 4 years this community has taken a very close look at itself in a way that perhaps few other communities have.

I was involved with one study that not only did a global analysis of where Akron assets stood within that entire industry, but the potential that that industry had not only for Akron, but for the Nation as a real contributor to our economy.

It was absolutely clear in quantifiable ways that Akron today continues to represent a world-class concentration of talent and that that particular sector had as much potential for growth as any material sector anywhere on earth.

All that having been said, we have been through a series of extremely difficult episodes, whether we're talking about the repeat-

ed raids on Goodrich, the conscious efforts of Goodrich and Uniroyal to bring together a joint venture, the consequences with regard to the raid on GenCorp, the inside-out restructuring of Firestone and the enormous threat that the raid had on Goodyear.

The kinds of stories that we're hearing today are the product of failed efforts, for the most part. The consequences of successful efforts are of a magnitude several times removed from what we've seen.

We see that kind of caution from the sort of responsible, long-term progressive development that has made the Polymer Industry a source of potential growth. That's a story that is not healthy for this community but in a larger sense, it's not healthy for the long-term productive capacity of an entire nation.

I thank you very much for your effort on this issue and for taking a genuine leadership role across an entire Congress in making sure that we act responsibly.

Chairman ECKART. Thank you. Let me thank our witnesses, Mr. DeLuca and Mr. Clem.

You can be a leader if we don't allow certain folks to have to try with one hand tied behind their back. What's happening in Cumberland has received extensive publicity in the Washington area and from one of our colleagues who had taken 1-minute speeches, not criticizing the management of the direction, but just talking about a failed policy.

It's just a lot of these votes are like blackbeard pirates who sweep over the horizons, step over the assets, shoot the crew and leave it adrift is absolutely scary.

Let me thank the witnesses once again. Let me thank your staff here in Akron for being helpful.

Let me thank Phyllis and wish her a belated happy birthday. She spent her birthday here in Akron. Whether or not she had a good time is not certain. We were supposed to call her for a conference call at 10:30 to go over any last minute details and she didn't answer her phone, so she must have had a good time last night.

I also want to thank Pat Buso who has taken copies from all the testimony and will return it to Senator Glenn's office.

Akron should be complimented for the way it rallied together in a great positive joint effort and not because of fighting off a takeover. We can certainly put the lessons we've heard today to good use in our Small Business Committee markup of a merger and acquisition bill and community impact statements. How we recognize small business participation, whether I'm talking about the mix of small enterprise up in Cleveland, or whether here, or when Small Business United from England had come in to talk to me about rewriting the M&A bill, you folks had a huge stake in it. Let me say that any time we can get away from Disneyland east and talk to real folks with real problems, the Congress is better off for it.

If there is no further business to come to the subcommittee, we stand adjourned.

[Whereupon, at 11:59 a.m., the committee adjourned, subject to the call of the Chair.]

APPENDIX

Statement of
STEVE CLEM
Director of Research and International Affairs
United Rubber Workers International Union
to the
Antitrust, Impact of Deregulation, and Privatization Subcommittee
of the
U. S. House of Representatives Committee on Small Business
on
Hostile Corporate Takeovers
May 29, 1987
Akron, Ohio

Mr. Chairman and Members of the House Subcommittee on Antitrust, Impact of Deregulation, and Privatization:

My name is Steve Clem. I am Director of Research and International Affairs for the United Rubber Workers International Union. We represent approximately 110,000 workers across the United States and Canada. The URW is headquartered in Akron, Ohio where it was founded 52 years ago.

I want to thank this Subcommittee for scheduling this important hearing. The URW has previously presented its views on hostile corporate takeovers to the House Subcommittees on Monopolies and Commerical Law (two occasions--November 18, 1986 and March 26, 1987) and Employment and Housing (March 31, 1987) as well as to the Senate Antitrust Subcommittee (April 2, 1987) and the Senate Banking Committee (April 8, 1987). We welcome this additional opportunity to put our position before the Congress.

The Rubber Workers unfortunately have had some relatively recent first-hand experience with hostile takeovers. In view of that experience, I would like to provide you with the URW's perspective, particularly as it relates to The Goodyear Tire and Rubber Company where we represent some 25,000 workers. As you know, Goodyear fought off a hostile takeover attempt by Sir James Goldsmith late last year. A significant part of this statement is devoted to the costs of that somewhat Pyrrhic victory.

The question is, of course, much deeper and far broader than a single company or a single raider. It is a problem that has grown in magnitude and scope to the point that the economic health of the United States is quite literally threatened.

In the opening statement at a hearing held April 8th by the Senate Banking Committee, Senator Proxmire stated that in 1986, American companies spent $177 billion on takeovers, an amount in excess of that which American manufacturers spent on plant and equipment. $41 billion of that was spent on hostile deals. According to Senator Proxmire, that $41 billion was twice the sum spent on all initial public offerings and 1300 percent higher than all the venture capital commitments during the year.

The billions of dollars used to finance, as well as fend off, takeovers is money that is consequently not available for investment to strengthen the U. S. economy. The money, time, effort and imagination that corporate managers are forced to devote to fighting takeover battles would be more wisely spent in manufacturing higher quality products and providing better services at a lower price to the benefit of all of our citizens.

Corporations are in business to make money and we want them to be prosperous because we expect to share in that prosperity. The activities of the corporate raiders, however, are not at all conducive to those objectives. Rather, we see corporate takeovers as a method to make enormous and obscene profits for the already rich without creating anything new in the way of jobs, products or enhanced competitiveness. They are, in our opinion, "sterile" transactions.

The world economy has never been so competitive as it is today. We face an enormous and rising trade deficit which means that not only are we having difficulty competing abroad, but we're having trouble competing in our own backyard.

Corporate America has been castigated, and I think rightfully so, for paying too much attention to the short-term bottom line at the expense of long-term competitiveness and thus future job security. There must be investment in quality, innovation and product development if corporate America and our high standard of living is to survive. As a Nation, we must make the necessary preparations to replace our aging equipment and facilities. We must invest in our future if we expect to have one.

Such a long-term philosophy, however, seems to have been an invitation to the corporate raider who regards stock prices as the only proper measure of a company's success or failure and who sees a company with vision as an opportunity for a quick buck. The raider can step in, force a company to change its direction in response to a takeover threat and in the process reap millions of dollars through greenmail or through the systematic dismemberment of a company.

American corporations thus find themselves caught in a double-bind. If they put emphasis on short-term results and stock price at the expense of capital investment, research and development, they run the very real risk of losing their ability to compete over the long term. If they pursue a long-term growth strategy, the bottom line may initially suffer and lead to an undervaluation of the stock and a takeover threat. It can be a classic no-win situation.

That is essentially what happened to Goodyear as a result of Sir James Goldsmith's hostile takeover effort. We regard this as an abuse of wealth intended to benefit Goldsmith and his associates--no one else. In the Goodyear attempt, he netted $94 million when he sold his shares back to the Company at a premium. Goodyear also paid $37 million of his expenses.

To fend off the takeover attempt, Goodyear restructured itself, a process that has thus far meant $4 billion of debt, the sale of certain

subsidiaries to finance that debt and a cost reduction program that has resulted in jobs being lost and plants being closed.

According to the Company, when the restructuring is complete, Goodyear will be 12 percent smaller. Goodyear has closed three of its plants and has said it may close more as part of its strategy to recover from last year's takeover bid by Goldsmith.

Two of the plant closures are tire plants in Cumberland, Maryland and Toronto, Ontario where the URW represents the hourly employees.

In Cumberland, over 1,000 Rubber Workers (Local 26) are losing their jobs. The Kelly-Springfield (Goodyear subsidiary) plant was scheduled to close May 21. Our members in that plant earned an average of $11.72 per hour excluding fringe benefits. Some $25 million of wages a year will be directly taken out of the Cumberland economy. Manufacturing wages generally multiply 6 or 7 times through the economy which means that the loss of the Cumberland jobs could cost the local economy $175 million annually.

Goodyear Chairman Robert Mercer had this to say on the interest on the new debt incurred as a result of the takeover attempt: "The interest.....is $200 million a year. We could have built a new plant with that money in Cumberland, Maryland. Instead, we're closing one down there." (Akron Beacon Journal, January 23, 1987)

In Toronto, nearly 1,400 URW members (Local 232) and roughly 200 white-collar employees are losing their jobs. Our members made $14.07 per hour there. When they leave Goodyear, $40 million (Canadian) will initially be pulled from the local economy which will ripple into a loss of some $280 million a year. This estimate does not account for the impact of the salaried personnel who are also losing their jobs.

The third plant closing is a hose couplings plant in Menominee, Michigan which employed 150 people. This plant was not part of the URW.

In addition, the Company, just prior to the takeover attempt, announced the closing of a shoe products plant in Windsor, Vermont. The URW has a six-month advance notice provision in its collective bargaining agreement with Goodyear which provides that the parties will negotiate to save a plant. The Goldsmith caper effectively precluded any chance of success in such negotiations and in our view, the Windsor plant must be counted among the casualties of the attempted takeover.

In Windsor, the 300 members of URW Local 289 earned an average wage of $9.50 per hour. The closing of that plant will mean the loss of about $6 million to the local economy. The multiplier effect will up the eventual cost to $42 million annually, exclusive of white-collar layoffs.

Other consequences of last November's raid include the loss of 80 hourly jobs in Akron (URW Local 2) with the potential for 40 more and the negotiation of concessions at the Company's Gadsden, Alabama tire plant (URW Local 12) which are expected to provide some $20 million relief per

year with half that coming from wage cuts. The two together can be expected to take a total of $72 million out of their local economies.

Local 2 also has agreed to a collective bargaining agreement with Motor Wheel Corporation, the new company that bought the Goodyear rim plant in Akron. The sale of this plant was part of Goodyear's restructuring program. While the new contract maintains the previous wage level, it does not contain provisions for vacations, pensions or plant closure notification, items that were a part of the contract when Goodyear ran the facility. Employment at the plant is expected to decline from about 400 workers to 175 workers by the end of the year.

Salaried workers have also felt the effect of the restructuring. Some 600 Goodyear white-collar positions in Akron have been eliminated. All told, about 1,800 salaried personnel have been cut throughout the Goodyear system since the restructuring program began.

Goodyear's remaining employees' futures are far from secure, endangered by the decision to chop the research and development program by 7 percent and reduce capital expenditures by $275 million in order to provide cash to handle its new debt.

The foregoing has concentrated on the economic impact the restructuring brought on by the takeover attempt has had on Goodyear employees. But direct employees of Goodyear were certainly not the only people affected. The effects of the takeover attempt have also been felt by Goodyear's vendors of services, equipment and supplies, expecially where a plant closure was involved. Often these are small local businesses geared to the specific industry involved and which may be unable to adjust to serve other customers, if there are any. If they can't adjust, they likely go out of business, causing further economic hardship for the community and resulting in the loss of still more jobs.

People are our bottom line. Where will these people and possibly many others find new jobs? The statistics indicate that getting a new job in this Country is often a lengthy process and that, in most cases, the new job offers less in wages and benefits than the old one. Consequently, the workers' standard of living is lowered; other businesses in the affected community stand to lose as their customers now spend less; the tax base of the community and the public services it is able to offer are likely to be cut. This is all part of the negative or reverse multiplier effect that ripples through the economy and touches the lives of many not directly associated with a plant closure or massive layoff.

The economic cost is enormous, but plant closures and indeed, enforced unemployment for whatever reason, present an even more terrible waste: the waste of our nation's most valuable resource—its people.

A definite relationship between unemployment and physical and mental illness has been clearly documented. According to the Institute for Social Research at the University of Michigan, plant closings are accompanied by increased incidence of arthritis, high blood pressure and ulcers among terminated workers. Psychologists and social workers have found noticeable increases in divorce, alcoholism, child beating,

depression, drug abuse, suicide, criminal behavior and poor mental health among the unemployed. Dr. M. Harvey Brenner of Johns Hopkins University prepared a study in 1984 for the use of the Joint Economic Committee of the U. S. Congress titled "Estimating the Effects of Economic Change on National Health and Social Well-Being." Among the many statistics generated from Dr. Brenner's investigation is one which shows that among those who are forced into unemployment through the closing of a plant, the suicide rate is thirty times higher than that of the rest of the population.

In a takeover battle then, workers, suppliers, customers and the community, factors of little concern to the takeover artist, are ultimately the losers. Workers often finance the costs of a raid by job losses or pay cuts. Even workers who may keep their jobs for now pay the price of job insecurity as they run the very real risk of losing those jobs later on as the company finds itself becoming less competitive in the future.

While the Goodyear attempt is the most clear-cut in terms of the effect on its employees, other companies in the rubber industry have also had experience with corporate raiders. Firestone, BFGoodrich and Uniroyal were all involved with Carl Icahn at some point over the last several years. Goodrich paid greenmail to Carl Icahn. Uniroyal did the same, then entered into a leveraged buyout situation before selling its operating companies to pay off debt incurred in the LBO and finally liquidated the Company. So far, our people still have their jobs, but they certainly didn't get rich as a by-product of the entire transaction. Icahn and those involved with the LBO made millions. In all these cases, millions of dollars were diverted to nonproductive, noncompetitive uses.

More recently, GenCorp, known as General Tire & Rubber Company until 1984, found itself the target of a takeover attempt by a partnership affiliated with AFG Industries Inc. and Wagner & Brown. AFG Industries is an Irvine, California based glass maker while Wagner & Brown is a privately held oil and gas concern headquartered in Midland, Texas. The partnership made clear its intent to sell GenCorp's aerospace and soft drink bottling businesses to repay debt incurred in the takeover.

In response to the takeover attempt, GenCorp developed the following defense:

1) A tender offer for 54 percent of the Company's stock at $130 per share--far above the tender offer made by the partnership.

2) Sell General Tire.

3) Sell RKO Bottlers and RKO Pictures.

4) Intensify efforts to sell remaining RKO broadcast properties.

5) Cut costs at Aerojet General.

6) Cut costs at DiversiTech General.

GenCorp's restructuring amounts to reducing the size of the Company by 43 percent in terms of sales. The effect on General Tire will depend on who buys it. General Tire has 5 tire plants in the U. S. that will be affected. The URW represents the workers at 4 of those plants. The URW also represents workers at several DiversiTech plants around the country and we are concerned that the cost-cutting program there may lead to layoffs.

At this point, it is too early to tell what the eventual outcome will be in the GenCorp situation. At this point, the restructuring has affected primarily salaried personnel, including 225 in the Akron area.

For its efforts, the partnership made a profit of just over $100 million by selling its shares in the market.

There is something inherently wrong with our system when it allows and even encourages this kind of corporate extortion. This kind of power must be curbed. A business should be able to operate to benefit its customers, its owners, its employees and its community--not the corporate raider who generally knows little or nothing about the company he is raiding or the industry in which that company operates, who does not care what hardship his tactics may bring to the people who work for the target company and to the community at large.

We are asking the Congress for help in "restructuring" our laws so they do not allow the dangerous speculative excesses that fuel the takeover epidemic.

We recommend the following as steps that can restore order to the takeover process and afford protection to workers involved:

1. Require a successor clause in union contracts.

2. Bar corporate raiders from tapping a company's pension fund and siphoning off so-called "excess assets" in order to pay off debt incurred in the raid.

3. Eliminate special "golden parachutes" that protect corporate executives, but not the workers, against loss of income if jobs are eliminated.

4. Eliminate "greenmail."

5. Bar raiders from all windfall profits when they sell off stock that has shot up in value because of speculation fueled by the takeover war they started.

6. Tighten regulations on junk bonds to prevent excessive use in financing stock purchases.

7. Notify stockholders more quickly of a takeover attempt by lowering the disclosure threshold and shortening the time period for disclosure.

8. Give stockholders a longer time to respond to tender offers.

9. Eliminate two-tiered tender offers.

10. Afford the shareholders of a target company the opportunity to vote on whether the company should be acquired.

11. Give shareholders of acquiring corporations a vote on whether their company should acquire another.

12. Corporate directors who receive an offer from incumbent management for an LBO should be required to deal with that management in an arms-length fashion.

13. The raider should be required to disclose the principal economic assumptions underlying their asset valuations and projections, the sources of and conditions on the raider's financing, the business plans for the target and any plans with respect to the closing or sale of any facilities of the target.

These proposals form the basis of the AFL-CIO position on the issue of takeovers, a position which the URW endorses.

The activities of the corporate raider represent a serious threat to our Nation's future economic competitiveness. We are very concerned that our ability to remain a major world economic power is being compromised and damaged beyond repair.

SC:slu/opeiu 339

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE on ANTI-TRUST, IMPACT OF DEREGULATION & PRIVATIZATION

COMMITTEE on SMALL BUSINESS

TESTIMONY OF DENNIS W. RICH

MAY 29, 1986

Mr. Chairman, members of the sub-committee, thank you for the opportunity to testify today with regard to the effects of hostile takeovers on American small business. Goodyear Tire & Rubber was the victim of a hostile takeover attempt last Fall. As you well know, Mr. Chairman, management, our employees, our customers, the communities in which we operate, our Federal Senators and Representatives and, in no small measure, our state and local government cooperated in a successful defense. At least we were successful in the sense that the raider went away and we still have our core business intact. URW president Mike Stone appropriately deemed it a Pyrrhic victory.

Others have detailed the havoc wrought by that 'raid' - the over four thousand jobs lost, closed plants, reduced research and development and the yoke of four billion dollars of debt which will severely constrain investment in new plant and equipment for at least three years - until we can reduce debt to prudent levels. Rather than repeat those details, I have included them in my written testimony which I ask be included in the record. Thank you Mr. Chairman.

Permit me to set the scene with just two quotes. The first is from Peter Drucker:

> "the hostile tender offer has become a dominant force --many would say the dominant force--in the behavior and actions of American management, and almost certainly a major factor in the erosion of American technological leadership"

The second quote is from Felix Rohatyn's testimony before the Senate Finance and Banking committee last January:

> "(hostile takeovers)...weaken many of our companies by stripping away their equity and replacing it with high cost debt. Leverage can promote growth when borrowed funds are used to make new investments to meet future market needs and be more competitive. It is quite another story when leverage is created to pay out shareholders today at the expense of growth tomorrow."

The facts bear out this testimony.

In the fall of last year Anglo-French takeover artist James Goldsmith launched a raid on Goodyear. Frankly admitting he knew nothing about the tire business, he asserted that we had "taken our focus off" the tire business. Inasmuch as we are #1 in a highly competitive global market and actually gained market share last year - it is tough to imagine what we could have done had we been "focused" as Goldsmith urged.

Without getting into excessive detail, I should mention that the tire business is a mature slow growth industry. Energy prices, technology and population demographics have converged to cap near term growth in tire sales. In an effort to redeploy resources into higher growth businesses, we had announced our intention of expanding our aerospace and energy segments to be, together, equal to our tire business. Let me assure you, as our chairman assured customers, employees, vendors and investors over the past four years, we had no intention of letting our leadership of the tire industry slip.

In fact we did not. Capital expenditures in the core business rose during that period from $300 million to $600 million. R&D in the core business rose from $234 million to $292 million which represented over 25% of industry R&D.

Our capitalization was 33% debt and 67% equity at the beginning of 1986 well below the 50% debt limitation contained in our indenture agreements.

We were aware as all the raiders are, that more cash could be raised quickly by selling off pieces of our businesses than by operating them. However, we thought then, and still believe, that our attention should be devoted to operating businesses, not selling them... to producing goods and services, not manipulating financial instruments.

We could not stand by and watch a stranger disect the product of so much work...the pride of so many people. You may call it "entrenched management". I do not believe that our 120,000 employees, tens of thousands of dealers and suppliers, and hundreds of thousands in communities who depend on Goodyear expected anything less than the defense we mounted. We all felt shocked and somewhat helpless in the face of one man backed by billions of dollars raised essentially by pledging our own assets.

I am not proud of what happened. I would have preferred to continue with our long range plan. We had rehearsed for such an occasion. We had reluctantly passed a "shareholder rights plan" only four months earlier. Still there was little we could do but defer the long term plan - sell off our best hopes for growth - our aerospace and energy segments - and buy back our own stock.

Some would say it worked. Within thirty days of concluding our self tender for 41% of our stock, it had jumped $22 dollars/share to $55. This gave every shareholder a price higher than that earned by the raider. In April, Goodyear stock passed the $65 mark and in May hit $70.

However, in the process:

- we raised $4 billion in debt, taking our financial leverage to an unprecedented 80% of debt to total capitalization.
- we cut R&D
- we cut capital expenditures
- we cut advertising
- we cut training
- we closed three plants
- we reduced 1,800 salaried and 2,500 hourly employees through early retirement and special separation programs.
- we sold three major business segments.

That is hardly what I would call a victory. However, Goldsmith has gone away for five years.

The purpose of my appearing before you to recite these unpleasant facts is to document just one of many examples of the hostile takeover phenomena. Our economic system has produced miracles of productivity and wealth and, even now, I am reluctant to tamper with it. But the system can be abused and the record of much of the recent hostile takeover activity makes it clear that the system is being abused. The victims of this abuse include America's competitive position in global competition. The victims are our industrial base and thousands upon thousands of hard-working Americans whose livelihood is being systematically destroyed. The system cries out for reform.

I do not pretend to be an expert on the "ripple effect" caused throughout our economic system through the loss of base manufacturing jobs. Dr. James Stranahan, of Akron University's Center for Urban Studies, tells me that the phenomenon reflects from one to seven service sector jobs supported by each manufacturing job. I have to believe that in a well developed infra-structure, as we have here in Akron, that the loss of headquarters jobs would be multiplied by two and a half to three in its ultimate impact on the community. Small businesses will pay a large price for the selfish action of a few raiders and their fellow traveler speculators. Small businessmen have even less control over their own destinies in a takeover battle than we the target firm - and that is too darn little.

What I do know is that you can't export most services. We will never regain American competitiveness in share of the world market by exporting services. Moreover it is the manufacturing sector - especially the small businesses - which provide the productivity growth which underlies not only our competitiveness but our entire standard of living. Although manufacturing productivity is currently languishing in the 2.5 to 3% p.a. area, when combined with the rest of the American economy the average is less than 1%. Without manufacturing, productivity growth would be negative!

There is a problem. Goodyear will do its best to retain its technological and market leadership. Foreigners have claimed 24% of the U.S. replacement tire market; largely since 1980. The French, the Japanese and, lately the Koreans have made inroads in the tire market here. Only by continuing our investment in plant modernization and product technology can we continue to hold them at bay. Fortunately our investments over the past decade have given us such a lead that we can afford to direct our attention to the short term cash flow required to meet the burdensome debt service brought on by the restructuring.

Had we been attacked in 1977 we would never have made the $260 million dollar investment to build a state-of-the-art plant in Oklahoma. That took several years to begin paying out. Had we been attacked in 1983, we would have been unable to invest $250 million in Texas to convert an old bias ply tire plant to one that will meet Korean competition head-on as it gets up to full output this Spring.

These investments take time. The same could be said for expansions in Alabama in 1976; in Tennessee in 1981; a new plant in North Carolina in 1982. Conversely, in the present unrestrained takeover climate, plants such as those at Logan & Jackson, Ohio would have been on the close down list in those years but now are booming with business. In the absence of raiders, we have succeeded in saving jobs.

We are not giving up our long range goals but for the next three years, at least, we have no choice but to focus on debt repayment. In spite of our asset sales, it will take that long to get back down to an appropriate 50% debt to capitalization ratio.

Gentlemen, there is a vocal and articulate minority who defend the hostile takeover as though it were integral to the rugged individualism that made America great. To listen to them, reform is the antithesis of democracy propounded only by "entrenched management". I must confess that the kind of language they use turns me on; open and free-wheeling capitalism, unfettered entreprenuerialism. But what they do turns me off; secrecy, selfishness, speculation, manipulation.

They claim to be good for the shareholder; yet only time can tell whether the instantaneous gratification of a speculative run-up creates more wealth than the long-run investment plans of experienced management. After they have run out of companies to "put into play", who is left to generate the productivity and technology for tomorrow? American management is perfectly aware of the "kicker" that is available through increased financial leverage. We didn't need a raider to teach us how to exchange debt for stock. We were aware of the "control premium" one pays on acquisition or earns on divestiture. We didn't need a raider to show us how to "break up" our company.

Our stock price was doubled through these restructuring maneuvers. Did we create wealth? I think not. In the long run, I think we destroyed wealth. The cutback of investment in equipment, R&D and training may improve current year cash flow but, we believe, jeopardizes the future. The divestiture of our non-core business segments captures the control premium and asset value up-front but robs us of future growth. The substitution of debt for equity does wonders for earnings per share today but increases risk and reduces cash available for investment tomorrow. There is something wrong with the system.

In addition to the self-interested opposition, there is a well-intentioned group at one end of the spectrum whom I characterize as the "laissez faire capitalists" and at the other end of the spectrum the "activist/protectionists". I have little faith in either position. Both are burying their head in the sand with respect to the strengths of our economic system.

We want to preserve the economic system that allowed us to focus our attention on the production of goods and services not the manipulation of financial instruments. I have three generalizations from our experience which I hope will be relevent to your legislative efforts. The three relate to current cliches or conventional wisdoms. The first regards sources of "American competitiveness", the second regards "short-term results" and the third relates to diversification versus "minding your knitting".

COMPETITIVENESS

It makes me angry to hear cliches such as "loss of American competitiveness". Goodyear competes in every market in the free world - and wins. We have done it by investing - in technology, in equipment, in people. We didn't get "concessions" from labor, we got co-operation. We got hard work and, more importantly, ideas - ideas that resulted in our building nothing but top quality product. And we got willingness to take on responsibility for competitiveness, to participate in decisions that affect competitiveness, to become active partners with management.

We did not get quotas or other protection from government, we got a stable investment climate and a fair tax system (at least we thought so a year ago). That is basically all we ask. Goodyear has a positive trade balance of over $400 million - inspite of the fact we have to import natural rubber.

I ask the doomsayers to look around. Look at that Korean imported car for example. Look at the tires. They're Goodyear - made in USA! We can be globally competitive. We can be globally competitive, without protectionism, if you can give us the environment in which we can make long term investments. It takes more than two years to even begin to make a payout on a new tire plant which is a quarter of a billion dollar investment. We cannot do that if we have to look over our shoulder each quarter for a hostile raider.

SHORT TERM RESULTS

Point number two; since my last testimony, Goodyear has reported first quarter profits - record profits. It makes me angry that supporters of hostile takeovers will point to that and say "See, ya got the fat out!" Let me say two things. First, you can't pay down four billion dollars of debt with promises. You need cash and cash comes from profits. Anybody can make short-term profits - - if they have previously made long-term investments - which we did. Anybody can raise cash today - all you have to do is to "sell your future" - your diversification - which we did. We had no choice. With a debt like ours, if we don't have record profits, we don't have a company. Those record profits came from increased sales, increased market share and reduced cost due to completion of our new Tyler plant. Actually the effects of the restructuring expense reductions won't be felt until the second quarter - so none of the record profits is due to the raider's attack. What the attack did for us is provide an $87 million dollar interest bill to overcome - a million dollar a day 'present' from Goldsmith!

Have we made the investors happy? I guess so, if by investors you mean the quarter-by-quarter fund managers who live and die by the near term. Ask any broker, they don't care if the stock goes up or down - as long as it moves, they can make money. We are told that Wall Street loves a "pure play" - a company that has no diversification - because they can ride the stock up and down the steep cycles that a single industry such as ours is subject to. But how about the 'other' investors, the little guys whose future - whose pensions and life-long savings are in Goodyear stock? Is it right to play russian roulette with their investment - to say nothing of employees and whole communities?

DIVERSIFICATION

We believe we are in business to produce - returns for investors and product for consumers - we are not in business to manipulate financial instruments. That doesn't contribute to real wealth - for the investor or the nation. There is a basic conflict here that is at the root of the hostile takeover movement. Management is committed to prudent investment for long-term growth. Diversification is part of that strategy. Yet diversification leads to the hostile raid.

It is simple mathematics. Legitimate acquirors are willing to pay an acquisition premium - known as a "control premium" - to gain control of a business. Therefore a business, which can be sub-divided into viable parts, is worth more 'broken up' than it is as a whole. Raiders can take advantage of this principle to acquire a business and then sell the parts for more than the market for the whole. We know it's true. We just did it to ourselves when we sold off our diversifications to pay down our debt.

It makes me angry when liberal economists, such as Robert Reich from my own alma mater, simultaneously advise us to "stick to our knitting" and let the "efficient market carry out portfolio diversification" while at the same time urging the government to get into "planning re-deployment of resources to accomplish global competitiveness". The private sector is perfectly capable of re-deploying resources - that was exactly what we were doing when the raider struck. We don't need giant government re-training programs, protectionism, industrial policy (the polite term for targeting) or tri-partite boards if you will just permit us the environment in which to do our own long-term investment.

The keys to hostile takeover are secrecy and speed. The keys to reform are disclosure and deliberation. The one thing the takeover artists can't stand is delay. We don't need more regulation. We need openness. Let the investors have a real choice, not the sort he gets today as charactarized by A. A. Sommer Jr. in his testimony before the Senate in January:

> "A shareholder confronted with a bid...is necessarily under considerable pressure to tender...He must assume that enough holders will tender to afford the offeror control, hence unless he tenders, he will likely be at the mercy of the offeror...left with the choice of remaining a shareholder in an enterprise managed by people in whom he has no confidence or selling his stock after the tender at a likely lower price"

Allow time for competing tenders to be put before the shareholders of record as of the first 13d filing. Let the wider constituency, that management must serve, know what each intends to do to increase shareholder wealth. We have always believed that unless we serve the interests of customers, vendors, employees, creditors and the communities in which we operate, we cannot maximize long-term shareholder wealth. Let all the shareholders know what is happening, and I have faith that investors will eschew instant gratification for long term value.

Eliminate the "bum's rush" the investor gets now and substitute the openness of full disclosure with time to choose. I don't pretend to know how to craft the careful legislation required to provide openness without burdensome regulation; but I know that effective reform is essential to prevent the awful economic waste of the current system. Competitiveness requires long term planning and investment. The current environment encourages just the opposite. Productive legislation to improve U.S. competitiveness is possible.

Require filing of a 13D with the Securities and Exchange Commission within one day after an individual or group acquires two percent of a company's stock. Under present law, a 13D is not required until ten days after five percent of a company's stock is in hand. By the time Goodyear and its average shareholder knew the identity and intentions of our raider and his partners last fall, they had accumulated 11 1/2 percent of our stock.

Second, I recommend extending the minimum period for a tender offer from the present 20 days to 60 days. A change in control of a corporation involves complex issues -- including determination of the corporate value -- and neither boards of directors nor shareholders should be stampeded into hasty decisions notwithstanding the desire for speed on the part of the raiders, arbitrageurs and investment bankers.

Third, prohibit greenmail. Payment of greenmail does not treat all shareholders equally. And its possible availability minimizes the potential risk for raiders.

Fourth, outlaw two-tiered and partial tenders. Like greenmail, they are not fair to all shareholders. And like the high threshold, long window requirement for filing a 13D and the 20-day period for a tender offer, they help turn what should be a rational, studied consideration into a stampede.

Fifth, limit such practices as "sweeping the street" and "creeping tenders". These operate to benefit the professionals at the expense of the ordinary investor.

And sixth, close the partnership loophole in the Hart-Scott-Rodino law through which raiders slip by organizing as partnerships and trusts, thus escaping the obligation to file with the Federal Trade Commission and Justice Department for purposes of antitrust review. A partnership, which has no shareholders, is protected from Hart-Scott-Rodino so it can attack a corporation that has shareholders. Let's bring the partnership out in the open or keep them out of the stock market altogether.

Finally, subject the raider (whether he be individual, partnership or corporation) to the same 50% margin requirement that a passive investor is subject to. Crafting legislation that copes with the difficulties of identifying sources of funds with their use will be difficult but the intent of the current law is clear and it should be enforced.

CONCLUSION

Goodyear will survive the hostile takeover attempt. We will survive precisely because we took the long-range view to invest in quality and innovation, because we 'took on' the global market which supports our leading position in R&D. We have enough momentum going for us as a result of investment in R&D, new plant, training, etc., to carry us for 3 years - the time necessary to get our debt reduced. True, we have been stripped of our diversification; our best hopes for stability and growth. True, we have been saddled with oppressive debt in an automotive industry that has been been subjected to severe cyclical swings in the past. Risking the investment of our shareholders, the businesses of our suppliers and our dealers, the careers of our employees, the well-being of our communities in this manner is not something we would have chosen. It is not responsible management - but, with the help of all those people, we will make it.

With your help, others may not be subjected to the experience. Thank you.

Business Planning

May 21, 1987

PREPARED STATEMENT OF HON. TOM SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Chairman Eckart, Rep. Hiler, Rep. Price, I'd like to welcome you to Akron and thank you for your interest in the problems facing the Greater Akron Area Community following several recent takeover attempts against two of our leading tire and rubber companies.

I'd also like to welcome Akron Mayor Don Plusquellic, Dennis Rich of Goodyear, Steve Clem of the United Rubber Workers, and the other fine witnesses who will provide testimony today. I look forward to your insights on the impact these takeover attempts have had, and how we can protect companies and consumers alike from short-sighted corporate raiders.

Since last November, when corporate raider James Goldsmith began his unsuccessful bid for Goodyear, the people of Summit County have become experts on a phenomenon that was usually reserved for discussion in corporate boardrooms and on Wall Street—hostile takeovers. We have had the unfortunate distinction of witnessing firsthand the impact these raids have had not only on our companies, but on our communities, our state, and the nation as well.

Akron has gone through many changes as industries relocated to other parts of the country and plants closed. But Akron is on a new course now, thanks to the determination of its people and increased cooperation between corporate and government officials.

As our local economy and our industries are beginning to grow, our corporations are becoming targets for takeovers. Two of our largest employers, Goodyear and GenCorp, which are headquartered in Akron and employ over 13,000 people locally, recently have gone through takeover attempts.

Goodyear successfully fought off Goldsmith's attack, but at the cost of a $2.6 billion takeover defense debt, plant closings, job losses, and early retirements due to the forced restructuring they are currently undertaking.

GenCorp also found itself the target of a hostile takeover bid earlier this year. At the time the bid was initiated, GenCorp management was taking steps to make the corporation more efficient and more competitive. GenCorp also fought off the takeover attempt, but at a cost similar to that of Goodyear's.

Of course, not all mergers and takeovers are bad; in fact, many do result in better managed, competitive companies. However, this was not the case with Goodyear. At the time the takeover bid was initiated, Goodyear was leading the world in the highly competitive tire and rubber industry with a 23% share of the world market. Fortunately, Goodyear has been able to retain that position.

It is increasingly clear that many corporate raiders are often motivated by short-term profit, not in creating new jobs or products, or in improving a company's competitive status. Furthermore, recent acquisitions have not shown any clear economic value to our national economy. Instead, valuable time and money has been spent planning possible acquisitions or devising strategies to defend against hostile bids. These are resources that will not be used for the investment that is vital to our nation's competitive stature.

In the final analysis, many raiders do not recognize any responsibility to the employees of a company, or to communities who are unregistered stakeholders in their own right.

They do not recognize the spin off effects, such as loss of local revenues, decreases in charitable contributions, or the impact on local contractors and small businesses who are dependent on these industries and who could be devastated by the loss or delay of contracts and services.

It would be tragic if speculative manipulation of corporate ownership were to replace productive investment and competition as the basis for our free enterprise system.

Congress is currently studying several proposals which would help protect companies and consumers from corporate raiders, and I am sure that the expert testimony we will receive today will help us craft legislation to do just that.

Again, I want to thank Chairman Eckart, Rep. Hiler and Rep. Price for their concern and interest in this serious problem.

Thank you, Mr. Chairman.

THOMAS C. SAWYER
14TH DISTRICT, OHIO

COMMITTEES
EDUCATION AND LABOR
GOVERNMENT OPERATIONS

Congress of the United States
House of Representatives

MERGERS AND TAKEOVERS: A GLOSSARY OF TERMS

Arbitrageur: a professional stock trader who deals in the stock of companies involved in takeover contests, or companies which seem likely to become involved in such contests in the near future.

Divestiture: the disposition through sale, merger, or liquidation of a subsidiary, division, product line, or other business asset.

Golden parachutes: employment contract provisions that guarantee substantial severance payments to top management if they lose their jobs as the result of a takeover.

Greenmail: a payment received from a company by a raider who has purchased a block of the company's stock and threatens to make a hostile tender offer. In order to negate the threat, the company buys the block of stock from the raider at a premium (i.e. pays more than the going market price). As a result, the value of other outstanding shares often decreases, thereby injuring the other shareholders.

Junk bonds: corporate bonds which are unrated or rated below "investment grade" by Moody's or Standard & Poor's, and which offer a high rate of interest to compensate for a high degree of risk to investors.

Leveraged buyout: a transaction in which a group of investors acquires and "takes private" a publicly-owned company (or a division or subsidiary of a firm). The acquisition is usually initiated by an investment banker, often in partnership with members of the firm's management. The transaction also depends on borrowing most of the purchase price, using the firm's assets as collateral. Leveraged buyouts have been undertaken to prevent hostile takeovers.

Poison pill: any of a wide variety of defensive maneuvers designed to discourage hostile takeovers. The basic poison pill is preferred stock convertible into cash or stock of the acquiring corporation upon completion of a merger. Many variations exist.

Pre-merger notification: a filing with the Federal Trade Commission required when a proposed merger meets certain criteria, including transaction size and the degree of control being acquired.

Tender offer: a public offer to buy some or all of the stock of a corporation within a specified time period. Notice of the offer must be filed with the Securities and Exchange Commission on Schedule 14D-1, disclosing, among other things, certain financial information about the bidder. To induce stockholders to thender their shares to the bidder, the price offered is generally well above the current market price of the stock.

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TAKEOVER LEGISLATION — 100th CONGRESS

Prepared by Rep. Thomas C. Sawyer

May, 1987

Sponsor and Bill Number	Legislation Amended	SEC Discretion	Tender Offers	Economic Impact Statement	Overall	Misc.
H.R. 386 Rodino	Clayton Act Sec. 7A	Extends time for regulatory evaluation of the anti-competitive effects of a proposed merger	Does away with distinction between cash tender offers and other types of mergers with regard to waiting periods	Acquirer must file a public economic impact statement detailing any intention to close plants or layoff workers over a 5 year period, and disclose financial information as to how the acquirer intends to finance the proposed acquisition	Does not address	Closes partnership loophole.
H.R. 1401 Dally	Securities Exchange Act of 1934	Closes 10-day window; acquisition of 5% stock must be reported within 2 days	Tender offers would remain open for at least 30 days	Disclose proposed changes in site of corporate headquarters, number or composition of employees, or other major changes.	Prohibits	
H.R. 2016 Penny	Securities Exchange Act of 1934	No change	SEC could suspend a tender offer if it determines that the offeror has not made a full and fair disclosure of all material information. Prohibits 2-tier tender offers.	Disclose proposed changes in corporate structure, including plant closings, changes in the work force, and modification of supplier agreements.	Does not address	Requires 90 day advance plant closing notification, after consultation with affected employee, their representatives, and community and state officials.
H.R. 2172 Dingell/ Markey	Securities Exchange Act of 1934	Closes 10-day window; acquisition of 5% stock must be reported within 24 hours; buyer may not purchase any more of the target company's shares for 2 business days	Requires purchase of over 10% of company's shares must be done through a tender offer. Requires tender offers to remain open for 60 days rather than the 20 days required under current law.		Prohibits unless approved by majority of stockholders, or equal offer made to all stockholders	Closes partnership loophole. Prohibits brokers and dealers from continuing to trade stock that has been suspended by the stock exchange. Prohibits golden parachute severance pay plans during a tender offer. Requires shareholder approval of certain takeover defenses, such as poison pills

Sponsor and Bill Number	Legislation Amended	SEC Disclosure	Tender Offers	Economic Impact Statement	Greenmail	Misc.
S. 78 Metzenbaum	Securities Exchange Act of 1934	Closes 10-day window; acquisition of 5% stock must be reported within 2 business days			Company may not buy own stock for more than market price from any person holding over 3% of the stock, who has held it less than 2 years, unless it offers the same price to all owners of the stock	
S. 431 Metzenbaum	Clayton Act Sec. 7A					Closes partnership loophole
S. 432 Metzenbaum	Clayton Act Sec. 7A	Increases period for regulatory review to 60 days for mergers valued at over $1 million. Pre-merger notification filing would be available to state regulatory agencies.				
S. 521 Simon	Securities Exchange Act of 1934	Closes 10-day window; acquisition of 2% stock must be reported within 2 days.	Tender tender offers would must remain open from 21 to 45 days	Disclose intention to close plants operating for the period; estimate employee layoffs, and investor impact on affected communities	Prohibits unless majority of shareholders approve or same price is offered to all shareholders	
S. 678 Metzenbaum	Securities Exchange Act of 1934	Closes 10-day window; acquisition of more than 15% stock must be done by public tender offer, and acquisition of over 25% must be accompanied by a tender offer to be open for 6 months	Purchase of over 15% of a company's shares must be done by public tender offer. purchase of over 25% must be accompanied by a tender offer to be open for 6 months.			Bars a company from instituting any takeover defense which constitutes a structural change once a takeover bid is publicly announced without the approval of a majority of shareholders. Prohibits certain types of poison pills, and authorizes SEC to issue regulations governing them.
S. 772 Glenn	Clayton Act					Divestiture of any part of the assets of a merging company not accepted ready for a merger which lessens competition unless the buyer of the divested assets will be a viable competitor in the foreseable future